

LEGISLATIVE COUNCIL BRIEF

Pesticides Ordinance
(Chapter 133)

PESTICIDES (AMENDMENT) BILL 2013

INTRODUCTION

A At the meeting of the Executive Council on 8 January 2013, the Council ADVISED and the Chief Executive ORDERED that the Pesticides (Amendment) Bill 2013 (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Current Regulatory Regime

2. The Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention)¹ and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention)² are international treaties aimed at protecting human health and the environment from persistent organic pollutants³ and hazardous

1 The Stockholm Convention aims to protect human health and the environment from the potentially harmful persistent organic pollutants. In implementing the Convention, governments will take measures to restrict the production/use and/or reduction/ultimate elimination of the persistent organic pollutants identified by the United Nations Environment Programme.

2 The Rotterdam Convention aims to promote shared responsibility and cooperative efforts among the contracting parties in the international trade of certain hazardous chemicals and pesticides in order to protect human health and the environment from potential harm. The Convention has introduced a mandatory Prior Informed Consent Procedure to monitor and control the import and export of certain hazardous chemicals and disseminate national import decisions to the contracting parties.

3 Persistent organic pollutants are a group of compounds that possess toxic properties, resist degradation, bio-accumulate and are transported through air, water and migratory species, across international boundaries and

chemicals, including pesticides and other industrial chemicals⁴. The People's Republic of China (PRC) is signatory to both Conventions. The Central People's Government (CPG) has applied the Stockholm Convention and the Rotterdam Convention to the Hong Kong Special Administrative Region (HKSAR) on 11 November 2004 and 26 August 2008 respectively.

3. To comply with the requirements of both Conventions in respect of non-pesticide hazardous chemicals, the Environmental Protection Department has enacted the Hazardous Chemicals Control Ordinance (Cap. 595) in 2007, which commenced operation in 2008. For requirements relating to regulation of pesticides, we need to amend the Pesticides Ordinance (Cap. 133) (the Ordinance)⁵.

4. At present, the importation, manufacture, sale, possession and supply of hazardous chemicals which are pesticides are already regulated by the Ordinance. Under the Ordinance, the Director of Agriculture, Fisheries and Conservation (DAFC) must maintain a register of pesticides and a person must not import, manufacture, sell or supply registered pesticides except under a licence issued by DAFC. For pesticides not listed in the register (unregistered pesticides), the Ordinance prohibits their import, manufacture, sale, supply or possession except under a

deposited far from their place of release, where they accumulate in terrestrial and aquatic ecosystems.

4 At present, the Stockholm Convention covers 22 chemicals, of which 15 are pesticides and seven are non-pesticide chemicals. Of the 15 pesticides, six were recently added to the Stockholm Convention and the PRC has yet to accede to their inclusion. As such, the current legislative amendment would only deal with the nine pesticides that the PRC has already acceded to. The Rotterdam Convention currently covers 28 pesticides, four severely hazardous pesticide formulations (which are chemicals formulated for pesticidal use) and 11 non-pesticide industrial chemicals.

5 In 2007, the then Health, Welfare and Food Bureau conducted a public consultation on a package of legislative proposals to amend the Pesticides Ordinance, which sought to comply with the requirements of the two Conventions and at the same time introduce a pesticide product registration system and a scheme to regulate applicators of pesticides. During the public consultation, there were concerns that the combined effects of the proposals might result in small pest control companies being driven out of business due to high operational costs and that a substantial number of existing pesticide applicators would fail to be registered as the training requirement might be too high. Having regard to the possible impact on the trade, we have decided to drop the proposals and confine the present proposals to mainly comply with the requirements of the two Conventions. At the same time, we have taken considerable time and efforts in strengthening training for pest control workers, developing Codes of Practice for the relevant sectors in collaboration with the trade and promoting public awareness on the safe and proper use of pesticides.

permit issued by DAFC. Pesticides in transit or being transhipped are, however, exempted from the requirements of the Ordinance. Separately, under the Import and Export Ordinance (Cap. 60) (I&EO), each shipment of pesticides entering or leaving Hong Kong is required to be covered by an import or export licence except if it is in transit or air transshipment cargo⁶.

5. Currently, all pesticides covered by both Conventions are unregistered pesticides in Hong Kong, and are subject to the permit control under the Ordinance. However, the Ordinance falls short of regulating the export or use of such pesticides as required by the Conventions.

The Proposal

6. To comply with the requirements of both Conventions, we propose to amend the Ordinance to prohibit the export or use of pesticides covered by the two Conventions except under a permit issued by DAFC. As transshipment of pesticides involves the import and export of such pesticides, it is necessary for transshipment of pesticides controlled under the two Conventions to be subject to control under the Ordinance, except for shipments in transit or air transshipment cargo. The policy intention is to treat air transshipment cargoes as cargoes in transit which are not covered by the proposed amendments.

7. We further propose that the lists of pesticides controlled under the two Conventions should be set out in two schedules to the Ordinance (scheduled pesticides). The Secretary for Food and Health (SFH) will be empowered to amend the schedules by notice published in the Gazette. DAFC will also be given powers under the Ordinance, including the inspection and investigation powers, for the purpose of implementing the requirements of both Conventions.

8. Both Conventions do not apply to chemicals in quantities not likely to affect human health or the environment which are used for laboratory research, chemical analysis or as a reference standard⁷. In

⁶ Air transshipment cargo means transshipment cargo 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 transshipment area of the Hong Kong International Airport.

⁷ Article 3(2)(h) of the Rotterdam Convention states that the Convention does not apply to “chemicals in quantities not likely to affect human health or the environment provided they are imported: (i) for the purpose of research or analysis; or (ii) by an individual for his or her own use in quantities reasonable for such use.” Article 3(5) of the Stockholm Convention states that it does not apply to “quantities of a chemical to be used for laboratory-scale research or as a reference standard.”

line with the spirit of the two Conventions, we propose to amend the Ordinance so that a person importing, manufacturing, selling, supplying, in possession of, using or exporting any scheduled pesticide not exceeding 10g or 10mL that is contained in an individual package or container, and is used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard would be exempted from the permit requirement. The proposed thresholds are sufficiently high to cater for those purposes but unlikely to affect human health or the environment. It should be noted that the import and export of such pesticides would still be required to be covered by an import or export licence under the I&EO, except if they are in transit or air transshipment cargoes. Given that these are Convention-related pesticides, we consider that it would be prudent for the Administration to keep track of the import and export of such pesticides.

9. Along the same vein, we propose to exclude from the scope of the Ordinance all registered or unregistered pesticides not controlled by the two Conventions (i.e. all except scheduled pesticides) not exceeding 10g or 10mL that is contained in an individual package or container, and is used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard. Accordingly, all non-scheduled pesticides meeting these requirements would be exempted from the licence/permit requirements under the Ordinance, and the import/export licensing requirements under the I&EO.

10. The opportunity has also been taken to update certain provisions of the Ordinance related to regulation of pesticides –

- (a) providing appeals against certain decisions of DAFC under the Ordinance be made to the Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Cap. 442) instead of the Chief Executive. This would place the appeal hearing function with an independent and impartial body;
- (b) confining the existing power of warrantless entry for routine inspection of any premises by authorised officers under the Ordinance⁸ to –
 - (i) any premises or place (whether domestic or not) the address of which is stated in an application for a licence or permit under the Pesticides Regulations⁹; or

⁸ Section 15(3) of the existing Ordinance provides that an authorised officer may without a warrant enter any premises or place in or upon which the officer reasonably suspects any pesticide is kept, stored, sold or offered or exposed for sale.

⁹ Some licensees and permittees use domestic premises as their registered addresses for a licence/ permit granted under the Ordinance. A power to

- (ii) any other non-domestic premises or place; and
- (c) removing the ribbing requirement of pesticide containers¹⁰. As ribs and grooves have become a common feature of food containers, such requirement no longer serves any useful purpose in distinguishing the pesticide from other non-pesticide products. Removal of the requirement would alleviate unnecessary burden on traders.

11. The Ordinance as it currently stands does not apply to the Government. In preparing the Bill, we have reviewed whether the Ordinance as amended should apply to the Government. As Government agencies in general should be governed by the same level of standards as those applicable to private operators in the distribution and availability of pesticides, we propose that the Ordinance as amended by the Bill should apply to the Government.

12. We further propose to expressly exempt the Government and public officers discharging official duties from any criminal liability, given that the proposed offences under the Ordinance are regulatory in nature and there will be an administrative mechanism to ensure public officers' compliance with the statutory requirements¹¹. We also propose to

enter, without a warrant, such domestic premises for routine inspection of pesticides to ensure compliance with the Ordinance is necessary to protect public safety and is a justifiable and proportionate interference with the licensee's/permittee's privacy, given that a licensee/permittee has a lower expectation of privacy with regard to his/her registered address and given the relatively narrow scope of the proposed power which does not include a power to enter by force or a general power to inspect or search the premises. We believe that this would strike a balance between the need for routine inspection of pesticides by authorised officers to protect public safety and the need for protecting privacy in such premises in general.

¹⁰ It is currently required under the Pesticides Regulations that all containers of registered pesticides with a capacity under 2 litres available for sale at retail level shall be fluted vertically with ribs or grooves recognisable by touch.

¹¹ We propose to adopt the following administrative measures –

- (a) in the event that a department or a public officer is in breach of any requirement of the Ordinance, in line with established practice, the case will be promptly brought to the attention of a senior officer in the concerned department who will require the staff concerned to take immediate action to remedy the situation and will report to the Agriculture, Fisheries and Conservation Department (AFCD) on the breach and the action taken by the department and the staff (and report to Food and Health Bureau if the breach is committed by a staff from AFCD); and

expressly exempt public officers acting in good faith in the exercise of a power or performance of a function under the Ordinance from any civil liability. The proposed exemption is limited in scope in that it only exempts acts done in good faith and it expressly preserves the Government's civil liability for acts or omissions of public officers. The above is in line with the approach adopted in the Hazardous Chemicals Control Ordinance enacted for the purpose of implementing both Conventions.

THE BILL

13. The main provisions are –
- (a) Clause 1 specifies that the Amendment Ordinance will come into operation six months after its gazettal. This will provide sufficient time for traders to adapt to the new regulatory requirements.
 - (b) Clause 3 amends section 2 of the Ordinance by adding several new definitions and amending several existing definitions, including amending the existing definition of pesticide to exclude pesticides (except scheduled pesticides) not exceeding 10g or 10mL that are contained in an individual package or container and are used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard.
 - (c) Clause 4 amends section 3 of the Ordinance to provide that the Ordinance does not apply to –
 - (i) pesticides that are in transit;
 - (ii) transshipment of non-scheduled pesticides; or
 - (iii) scheduled pesticides that are air transshipment cargoes.
 - (d) Clause 5 adds a new section 3A which applies the Ordinance to the Government. Neither the Government nor a public officer acting in the officer's capacity is liable to be prosecuted for an offence under the Ordinance.
 - (e) Clauses 6 to 10 amend several provisions of the Ordinance in regard to the registration of pesticides and the issue of licences and permits by DAFC in respect of different activities involving

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- (b) if any non-compliance is due to failure or negligence on the part of a public officer in discharging official duties, the public officer concerned may be liable to disciplinary or other actions according to the applicable civil service rules and regulations or terms of employment.

registered, scheduled or other unregistered pesticides. Section 8 as amended will extend the scope of control of the Ordinance so that importing, manufacturing, selling, supplying, possessing and using of scheduled pesticides and other unregistered pesticides will require permits. A new subsection (2) is added to require a permit for exporting a scheduled pesticide. Scheduled pesticides not exceeding 10g or 10mL that are contained in an individual package or container and are used or intended to be used indoors for laboratory research, chemical analysis or as a reference standard will be exempted from the permit requirement.

- (f) Clause 11 repeals section 15(3) of the Ordinance and clause 12 adds a new section 15A which enables entry without a warrant to relevant premises¹² or place and seizure of samples etc. for routine inspection.
- (g) Clause 13 repeals the existing section 16 of the Ordinance (which provides for appeals to the Chief Executive) and clause 14 adds a new section 16A to provide that appeals may be made to the Administrative Appeals Board.
- (h) The new section 18A added by clause 16 enables DAFC to exercise his or her powers under the Ordinance for the purpose of implementing the requirements of the two Conventions.
- (i) Clause 18 adds a new section 19A which empowers SFH to amend Schedule 1 or 2 in relation to Convention-regulated pesticides and specified pesticides. Under the newly added section 19B, public officers are not personally liable for any act done or omitted to be done in exercising powers or performing functions under the Ordinance if they act in good faith.
- (j) New Schedule 1 specifies pesticides listed under the Stockholm Convention and Part 1 of new Schedule 2 specifies pesticides listed under the Rotterdam Convention. Part 2 of new Schedule 2 provides that section 8 of the Ordinance does not apply to certain scheduled pesticides to the extent as provided in that Part.
- (k) Clause 22 amends regulation 11(1)(c)(ii) of the Pesticides Regulations to remove the existing ribbing requirement on pesticide containers.

¹² Relevant premises 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; or
- (b) any other premises or place (other than domestic premises).

- (l) The remaining clauses are technical or consequential amendments.

B 14. The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be as follows –

| | |
|--|-----------------|
| Publication in the Gazette | 25 January 2013 |
| First reading and commencement of Second Reading debate | 6 February 2013 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

C 16. The proposal has financial, civil service, economic, sustainability and environmental implications as set out at Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Ordinance as amended by the Bill will apply to the Government. The proposal has no productivity implications.

PUBLIC CONSULTATION

17. To gauge the views of the trade on the proposed amendments to the Ordinance, the AFCD held five briefings for the stakeholders¹³ and individual meetings with the Pest Control Personnel Association of Hong Kong (PCPAHK), the Hong Kong Pest Management Association (HKPMA), South China Turf Managers Association, Hong Kong Cleaning Association and the Federation of Vegetable Marketing Co-operative Societies Ltd from May to September 2011 to consult them on the proposed legislative amendments. Additional meetings with HKPMA and PCPAHK were held from August to October 2012. All five organisations and the stakeholders consulted supported the legislative proposals.

¹³ Stakeholders include holders of pesticide licences and permits, pest control and cleaning companies, property management companies, horticulture and landscaping companies, logistics companies and associations, commercial laboratories, the Vegetable Marketing Organisation, shipyards, educational institutes, trade associations, green groups, public transport and utility companies, non-government organisations and golf clubs etc.

18. The LegCo Panel on Food Safety and Environmental Hygiene (FSEH Panel) supported the proposals at its meeting on 12 July 2011.

PUBLICITY

19. A press release will be issued on 25 January 2013 when the Bill is gazetted. A spokesperson will be available to answer media enquiries.

ENQUIRIES

20. Enquiries on this brief can be addressed to Ms Hinny Lam, Principal Assistant Secretary for Food and Health (Food), at 3509 7927.

Food and Health Bureau
23 January 2013

Pesticides (Amendment) Bill 2013

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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 transshipment area of Hong Kong International Airport;

cargo transshipment 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 |
| 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 |
| 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 |

| Item | Pesticide | CAS registry number |
|------|---|--|
| 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 |
| 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 | |

| Item | Pesticide | CAS registry number |
|------|--|------------------------------------|
| | 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 |
| | - 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 |

| Item | Pesticide | CAS registry number |
|------|--|---------------------|
| 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 transshipment 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 transshipment 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).

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| Section: | 2 | Interpretation | L.N. 331 of 1999 | 01/01/2000 |
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In this Ordinance, unless the context otherwise requires-

"active ingredient" (活性成分), in relation to a pesticide, means any substance, mixture of substances or biological agent in the pesticide which is the biologically active part of the pesticide; (Added 79 of 1990 s. 4)

"agricultural pesticide" (農業用除害劑) means any insecticide, fungicide, herbicide, nematocide, molluscicide or any substance (whether organic or inorganic) having any of the properties of-

- (a) destroying or repelling any insect, mite, mollusc, nematode, fungus, bacterium, virus of other pest capable of destroying or damaging plants;
- (b) directly or indirectly controlling the activity of, or preventing or mitigating the harmful effect on plants of, any such pest;
- (c) destroying weeds;
- (d) acting as a bird or animal repellent, plant growth regulator, defoliant or desiccant; [cf. 1967 c. 50 s. 2 U.K.]

"Director" (署長) means the Director of Agriculture, Fisheries and Conservation and the Deputy Director of Agriculture, Fisheries and Conservation; (Amended L.N. 331 of 1999)

"inert ingredient" (非主成分), in relation to a pesticide, means any ingredient of the pesticide which is not an active ingredient; (Added 79 of 1990 s. 4)

"inspector" (督察) means any public officer authorized to be an inspector under section 14;

"licence" (牌照) means a licence to import, sell or supply registered pesticides issued under section 9; (Amended 79 of 1990 s. 4)

"member of the Customs and Excise Service" (海關人員) means any person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342); (Amended 46 of 1977 s. 18; 68 of 1995 s. 2)

"permit" (許可證) means a permit to import, be in possession of, sell or supply an unregistered pesticide issued under section 9; (Amended 79 of 1990 s. 4)

"pesticide" (除害劑) means-

- (a) any insecticide, fungicide, herbicide, acaricide or any substance (whether organic or inorganic) or mixture of substances used or intended to be used for preventing, destroying, repelling, attracting, inhibiting or controlling any insect, rodent, bird, nematode, bacterium, fungus, weed or other form of plant or animal life or any virus, which is a pest; or
- (b) any substance or mixture of substances used or intended to be used as a plant growth regulator, defoliant or desiccant,

but does not include-

- (i) any purely mechanical device for trapping or catching insects, rodents or other animals;
- (ii) any purely electromagnetic or ultrasonic device for the control of mosquitoes, rodents or other pests;
- (iii) any antiseptic, disinfecting solution or preparation in clinical or sanitary applications; and
- (iv) any pharmaceutical product within the meaning of section 2 of the Pharmacy and Poisons Ordinance (Cap 138); (Added 79 of 1990 s. 4)

"plants" (植物) include trees, bushes and seeds;

"register" (註冊紀錄冊) means the register of pesticides maintained under section 4; (Amended 79 of 1990 s. 4)

"registered pesticide" (註冊除害劑) means a pesticide which is registered in the register; (Added 79 of 1990 s. 4)

"unregistered pesticide" (未經註冊除害劑) means a pesticide which is not registered in the register. (Added 79 of 1990 s. 4)

(Amended 79 of 1990 s. 4)

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| Section: | 3 | Application | | 30/06/1997 |
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(1) This Ordinance shall not apply to a pesticide which-

- (a) (Repealed 79 of 1990 s. 5)
- (b) (Repealed 79 of 1990 s. 5)
- (c) is in transit; or
- (d) is transhipped in Hong Kong.

(2) (Repealed 79 of 1990 s. 5)

(3) For the purposes of subsection (1)(c), a pesticide is in transit if it is destined for a place outside Hong Kong and is passing through Hong Kong on the same ship, aircraft or vehicle without transhipment.

(4) For the purposes of subsections (1)(d) and (3), a pesticide is in transshipment if 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 is or is to be removed from the ship, vehicle, train or aircraft in which it was imported and either returned to the same ship, vehicle, train or aircraft or transferred to another ship, vehicle, train or aircraft before being exported, whether it is or is to be transferred directly between such ships, vehicles, trains or aircraft or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.

(Amended 79 of 1990 s. 5)

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| Section: | 5 | Registration | | 30/06/1997 |
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(1) Any person may apply to the Director for registration of a pesticide.

(2) An application under subsection (1) shall be made in writing in the prescribed manner.

(3) After considering an application under subsection (1) the Director may-

- (a) register the pesticide in Part I or II of the register; or
- (b) refuse to register it.

(4) The Director may register a pesticide in Part I or Part II of the register although an application for registration of the pesticide has not been made under subsection (1).

(5) The Director may register a pesticide subject to such conditions as he may think fit.

(Amended 79 of 1990 s. 7)

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| Section: | 6 | Power of Director to cancel or modify registration | | 30/06/1997 |
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The Director may at any time-

- (a) cancel the registration of a pesticide in Part I of the register and register it in Part II of the register;
- (b) modify or add to, or cancel, any condition imposed by him under this Part in respect of the registration of a pesticide; or
- (c) cancel or suspend the registration of a pesticide if it appears to him to be necessary in the interests of public safety.

(Amended 79 of 1990 s. 8)

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| Section: | 8 | Control of unregistered pesticides | | 30/06/1997 |
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(1) Save under and in accordance with a permit, no person shall-

- (a) import into or cause to be imported into Hong Kong;
- (aa) manufacture; (Added 79 of 1990 s. 10)

- (b) sell or offer or expose for sale;
- (c) supply or offer to supply; or
- (d) have in his possession,

any unregistered pesticide. (Amended 79 of 1990 s. 10)

(2) Subsection (1)(d) shall not apply in relation to a person to whom the unregistered pesticide is sold or supplied by a holder of a permit in accordance with the permit conditions. (Added 79 of 1990 s. 10)

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| Section: | 9 | Licence or permit for pesticides | | 30/06/1997 |

- (1) An application for a licence or permit shall be made in writing to the Director in the prescribed manner.
- (2) After considering an application under subsection (1) the Director may-
 - (a) issue to the applicant a licence or a permit, as the case may be; or
 - (b) refuse to issue a licence or permit.
- (3) Where the Director refuses to issue a licence or a permit he shall send to the applicant a notice of the refusal and state in the notice the reasons for the refusal.
- (4) A licence may authorize the holder in respect of-
 - (a) registered pesticides generally;
 - (b) all pesticides registered in Part I of the register or any such pesticides as may be specified in the licence; or
 - (c) all pesticides registered in Part II of the register or any such pesticides as may be specified in the licence. (Amended 79 of 1990 s. 11)
- (5) Subject to subsection (6), the Director may issue a licence subject to such conditions as he may think fit. (Amended 79 of 1990 s. 11)
- (6) A licence authorizing the sale of a pesticide shall be subject to the conditions of registration of that pesticide. (Replaced 79 of 1990 s. 11)
- (7) The Director may issue a permit subject to such conditions as he may think fit and any permit issued shall specify the unregistered pesticide to which it relates. (Amended 79 of 1990 s. 11)
- (8) The Director may at any time vary the particulars of a licence or permit or modify, add to, or cancel, the conditions of a licence or permit.

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| Chapter: | 133 | PESTICIDES ORDINANCE | Gazette Number | Version Date |
| Section: | 13 | Directions on disposal of pesticide where licence or permit cancelled | 60 of 2000 | 01/07/1997 |

Remarks:

Adaptation amendments retroactively made - see 60 of 2000 s. 3

(1) Where the Director cancels a licence or a permit under section 10 or 11 he may give to the licence holder or permit holder such directions as he thinks fit for the disposal of the pesticide to which the licence or permit relates and for the disposal of any container containing that pesticide. (Amended 79 of 1990 s. 12)

(2) A licence holder or permit holder referred to in subsection (1) may apply in writing to the Director for a variation of any direction given under that subsection, stating the grounds of the application and the facts and circumstances relied upon in support of those grounds.

(3) The Director shall consider every application under subsection (2) and shall within 14 days from the receipt of any such application advise the licence holder or permit holder in writing of his decision to confirm or vary the directions given under subsection (1).

(4) Where any licence holder or permit holder referred to in subsection (2) appeals pursuant to section 16 against a decision under subsection (3), any period for compliance embodied in such direction shall be extended by the period between presentation of the appeal and notification of the Chief Executive's decision. (Amended 60 of 2000 s. 3)

(5) Any act done or omitted to be done in the carrying out of any direction given under this section shall not constitute an offence under this Ordinance.

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| Chapter: | 133 | PESTICIDES ORDINANCE | Gazette Number | Version Date |
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| Section: | 15 | Powers of entry, seizure, etc. | | 30/06/1997 |
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(1) If it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any place or premises any pesticide in respect of which an offence under this Ordinance is being or has been committed, the magistrate may by warrant authorize any inspector or member of the Customs and Excise Service with such assistants as may be necessary to enter the place or premises, by force if necessary, and search the place or premises named in the warrant.

(2) In any premises or place entered pursuant to subsection (1) an inspector or member of the Customs and Excise Service may-

- (a) seize and detain any article, document or thing which appears to him to be or to contain evidence of an offence under this Ordinance;
- (b) open and examine any article, document or thing specified in paragraph (a).

(3) An inspector upon production of his authority as an inspector or any member of the Customs and Excise Service may, at any time between the hours of 9 a.m. and 6 p.m., without a warrant enter any premises or place in or upon which he reasonably suspects any pesticide is kept, stored, sold or offered or exposed for sale and may-

- (a) require the production of-
 - (i) any licence or permit; or
 - (ii) any document which relates to the origin or nature of any pesticide or which he suspects to be relevant to an offence under this Ordinance;
- (b) examine and take copies of any licence or permit or of any document referred to in paragraph (a); and
- (c) require such other information and take, on payment therefor, such samples as may be necessary for the purposes of the inspection.

(Amended 46 of 1977 s. 18; 79 of 1990 s. 14)

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| Section: | 16 | Appeals | 60 of 2000 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 60 of 2000 s. 3

Any person who is aggrieved by any decision of the Director under this Ordinance may, within 28 days after the receipt of the notification of the decision, appeal therefrom to the Chief Executive and on any such appeal the Chief Executive may confirm, vary or revoke the decision of the Director.

(Amended 60 of 2000 s. 3)

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| Chapter: | 133 | PESTICIDES ORDINANCE | Gazette Number | Version Date |
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| Section: | 17 | Offences and penalties | | 30/06/1997 |
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(1) Any person who contravenes section 7 or 8 commits an offence and is liable on conviction to a fine of \$50000 and to imprisonment for 1 year.

(2) Any holder of a licence who contravenes any of the conditions of his licence or any holder of a permit who contravenes any of the conditions of his permit commits an offence and is liable on conviction to a fine of \$25000 and to imprisonment for 6 months.

(3) Any person who-

- (a) wilfully obstructs an inspector or member of the Customs and Excise Service in the exercise of any power under section 15; (Amended 46 of 1977 s. 18)
 - (b) refuses to allow any sample to be taken in accordance with section 15(3);
 - (c) fails without reasonable excuse to produce any licence, permit or document, or to give any information, when required to do so under section 15(3); or
 - (d) fails without reasonable excuse to obey a direction given by the Director under section 13,
- commits an offence and is liable on conviction to a fine of \$10000 and to imprisonment for 6 months.
- (4) A holder of a licence or permit who, in the manufacture of pesticides,-
- (a) uses any inert ingredient the use of which is prohibited by notice under section 13A(a); or
 - (b) uses any inert ingredient the use of which is subject to conditions specified by notice under section 13A(c) in contravention of any condition so specified,
- commits an offence and is liable to a fine of \$2000 and to imprisonment for 6 months. (Added 79 of 1990 s. 15)
- (5) A holder of a licence or permit who imports or causes to be imported, sells or offers or exposes for sale, supplies or offers to supply for use in Hong Kong-
- (a) any pesticide the import, sale or supply of which, as may be appropriate, is prohibited by notice under section 13A(b); or
 - (b) any pesticide the import, sale or supply of which, as may be appropriate, is subject to conditions specified by notice under section 13A(d) in contravention of any condition so specified,
- commits an offence and is liable to a fine of \$2000 and to imprisonment for 6 months. (Added 79 of 1990 s. 15)

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| Chapter: | 133 | PESTICIDES ORDINANCE | Gazette Number | Version Date |
| Section: | 19 | Regulations | L.N. 130 of 2007 | 01/07/2007 |

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) The Director of Agriculture, Fisheries and Conservation may by regulation provide for- (Amended 80 of 1997 s. 4; L.N. 331 of 1999)
- (a) applications for registration of pesticides including the information to be supplied by applicants therefor; (Amended 79 of 1990 s. 17)
 - (b) the imposition of conditions on registration; (Amended 79 of 1990 s. 17)
 - (c) (Repealed 80 of 1997 s. 4)
 - (d) the form and contents of the register;
 - (e) the proof of matters relating to registration by the production of certificates;
 - (f) the issue of licences and permits including-
 - (i) the information to be supplied by applicants therefor;
 - (ii) the imposition of conditions thereof;
 - (iii) the cancellation and suspension for any period thereof;
 - (g) the duration of licences and permits and the renewal of licences;
 - (h) the surrender of licences and permits;
 - (i) the issue of duplicate licences and permits;
 - (j) the containers for pesticides or classes or types of pesticides including- (Amended 79 of 1990 s. 17)
 - (i) the shape and size;
 - (ii) the design and colour;
 - (iii) the composition; and
 - (iv) the labelling and marking,
 of such containers;
 - (k) the storage of pesticides and conditions under which they are to be kept; (Amended 79 of 1990 s. 17)
 - (l) the approval of premises for the storage, repackaging or sale of pesticides; (Amended 79 of 1990 s. 17)
 - (m) the sale and supply of pesticides; (Amended 79 of 1990 s. 17)
 - (n) the advertisement of pesticides; (Amended 79 of 1990 s. 17)

(o) the forms to be used. (Amended 80 of 1997 s. 4)

(p)-(r) (Repealed 80 of 1997 s. 4)

(1A) The Chief Executive in Council may by regulation provide for- (Amended 60 of 2000 s. 3)

(a) fees and charges;

(b) exemption by the Director from compliance with any regulation made under this Ordinance, either generally or in a particular case. (Added 80 of 1997 s. 4)

(1B) The Secretary for Food and Health may by regulation provide for- (Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(a) the cancellation and suspension for any period of registration of a pesticide;

(b) generally, the better carrying out of the provisions of this Ordinance. (Added 80 of 1997 s. 4)

(1C) Subsection (1B) shall not be construed as enabling the Secretary for Food and Health to make regulations as regards any matter in relation to which regulations may be made under subsection (1) or (1A). (Added 80 of 1997 s. 4. Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties therefor not exceeding a fine of \$10000 and imprisonment for 1 year.

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| Section: | 23 | Transitional and savings provisions | | 30/06/1997 |
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(1) Notwithstanding anything in this Ordinance a person who, immediately before the commencement date-

(a) had in his possession any pesticide other than agricultural pesticide; or

(b) carried on a business of manufacturing, selling, offering or exposing for sale or supplying or offering to supply any pesticide other than agricultural pesticide,

shall be entitled to have in his possession that pesticide or to continue to carry on that business without a licence or permit-

(i) for a period of 6 months from the commencement date; and

(ii) if before the expiry of that period he applies for a licence or permit, until the licence or permit is issued, or finally refused.

(2) A person may import into Hong Kong any pesticide other than agricultural pesticide without a licence or permit during a period of 6 months immediately following the commencement date if that pesticide was ordered not less than 2 months before the commencement date.

(3) Notwithstanding anything in this Ordinance, the Pharmacy and Poisons Ordinance (Cap 138) in force at the commencement date shall continue to apply to any pesticide other than agricultural pesticide imported before the commencement date or imported under subsection (2) if such pesticide is or contains a poison within the meaning of the Pharmacy and Poisons Ordinance (Cap 138).

(4) A licence or permit granted under this Ordinance which was in force immediately before the commencement date shall remain in force, subject to the provisions of this Ordinance, for so much of the period for which the licence or permit was granted as falls after the commencement date.

(5) In this section-

"commencement date"* (生效日期) means the day appointed for the commencement of the Agricultural Pesticides (Amendment) Ordinance 1990 (79 of 1990).

(Replaced 79 of 1990 s. 20)

Note:

* **Commencement date-25 February 1991 (see L.N. 25 of 1991).**

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| Chapter: | 133A | PESTICIDES REGULATIONS | Gazette Number | Version Date |
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| Regulation: | 6 | Application for licence or permit | | 30/06/1997 |
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An application for a licence or permit shall be in a form approved by the Director, shall be accompanied by the

specified fee and shall state-

- (a) the name and address of the applicant;
- (b) the business name, if any, of the applicant;
- (c) the address of the premises in which any pesticide is to be stored, kept, displayed for sale or sold, and where there are more than one such premises the address of each of them; (L.N. 422 of 1990)
- (d) the pesticides in respect of which the licence or permit is required; and (L.N. 422 of 1990)
- (e) such further information as the Director may require.

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| Chapter: | 133A | PESTICIDES REGULATIONS | Gazette Number | Version Date |
| Regulation: | 11 | Registered pesticide not to be sold or supplied except in proper container | | 30/06/1997 |

(1) A licensee shall not sell, or offer or expose for sale, or supply, either by retail or in a form ready for sale or supply by retail any registered pesticide except in a container which-

- (a) is impervious to that pesticide; and
- (b) is sufficiently strong to prevent leakage arising from the ordinary risks of handling and transport; and
- (c) is made of-
 - (i) metal;
 - (ii) glass or plastic, the outer surface being, in the case of a container with a capacity of not more than 2 litres, fluted vertically with ribs or grooves recognizable by touch; or
 - (iii) such other material as may be approved by the Director for that pesticide; and
- (d) displays clearly and distinctly the number or mark, if any, assigned to it under regulation 15.

(1A) Paragraph (1)(c) and (d) shall not apply to a registered pesticide which is to be exported by a licensee to a purchaser outside Hong Kong. (L.N. 172 of 1983)

(2) No licensee shall sell, or offer or expose for sale, by wholesale or supply by wholesale any registered pesticide except in a container which complies with paragraph (1)(a) and (b).

(L.N. 172 of 1983; L.N. 422 of 1990)

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| Chapter: | 133A | PESTICIDES REGULATIONS | Gazette Number | Version Date |
| Regulation: | 17 | Director may issue directions relating to unregistered pesticides | | 30/06/1997 |

The Director may issue to a permittee such directions as he may think fit relating to-

- (a) the storing or keeping of unregistered pesticides;
- (b) the containers in which unregistered pesticides are to be stored or kept;
- (c) the labelling of such containers; and
- (d) the transport of unregistered pesticides.

(L.N. 422 of 1990)

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| Chapter: | 133A | PESTICIDES REGULATIONS | Gazette Number | Version Date |
| Regulation: | 19 | Offences and penalties | | 30/06/1997 |

(1) Any person who without reasonable excuse fails to comply with regulation 8(2) or 9(2) or with any requirement under regulation 14 commits an offence and is liable on conviction to a fine of \$2000 and to imprisonment for 6 months.

(2) Any person who contravenes regulation 10, 11, 12, 13 or 16 commits an offence and is liable on conviction to a fine of \$2000 and to imprisonment for 6 months.

(3) Any permittee who fails to comply with any direction of the Director under regulation 17 commits an offence and is liable on conviction to a fine of \$2000 and to imprisonment for 6 months.

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| Chapter: | 133A | PESTICIDES REGULATIONS | Gazette Number | Version Date |
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| Schedule: | | SCHEDULE | L.N. 480 of 1997 | 28/11/1997 |
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[regulation 2]

FEES

| Item | Matter | Fee \$ |
|------|---|-----------|
| 1. | For application for registration of a pesticide under regulation 3 | 2500 |
| 2. | For lodging of an application for a licence under regulation 6 | 125 |
| 3. | For lodging of an application for a permit under regulation 6 | 155 |
| 4. | For issue of a licence under regulation 7(1) in respect of pesticides registered in Part I only of the register | 395 |
| 5. | For issue of a licence under regulation 7(1) in respect of pesticides registered in Part II or both Parts I and II of the register | 800 |
| 6. | For issue of a new licence under regulation 9(3) and (4) at the request of a licensee | 520 |
| 7. | For issue of a permit under regulation 7(1) in respect of an unregistered pesticide imported or possessed only for re-export without re-packaging | 700 |
| 8. | For issue of a permit under regulation 7(1) in respect of an unregistered pesticide for any other purpose | 1280 |
| 9. | For issue of a new permit under regulation 9(3) and (4) at the request of a permittee | 825 |
| 10. | For renewal of a licence under regulation 7(2) in respect of pesticides registered in Part I of the register | 200 |
| 11. | For renewal of a licence under regulation 7(2) in respect of pesticides registered in Part II or both Parts I and II of the register | 580 |
| 12. | For issue of a duplicate licence or permit under regulation 7(4) | 160 |
| 13. | For extension of a permit under regulation 7(3) in respect of an unregistered pesticide imported or possessed only for re-export without re-packaging | 395 |
| 14. | For extension of a permit under regulation 7(3) in respect of an unregistered pesticide for any other purpose | 910 |

(L.N. 422 of 1990; L.N. 92 of 1994; L.N. 39 1995; L.N. 179 of 1996; L.N. 480 of 1997)

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| Chapter: | 442 | Administrative Appeals Board Ordinance | Gazette Number | Version Date |
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| Schedule: | | Schedule | 18 of 2012 | 01/10/2012 |
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[sections 3, 4 & 22]

| Item | Ordinance | Decision |
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| 1. | Apprenticeship Ordinance (Cap 47) | A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power |

- under the Ordinance.
2. Boilers and Pressure Vessels Ordinance (Cap 56)
 - (a) The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A. (Amended 15 of 2002 s. 8)
 - (b) A decision of the Boilers and Pressure Vessels Authority on the issue or endorsement of a certificate of competency under section 6(1)(a) or (3A)(a). (Added 15 of 2002 s. 8)
 - (c) A decision of the Boilers and Pressure Vessels Authority to revoke or amend a certificate of competency under section 6(4)(a) or (b), as the case may be. (Added 15 of 2002 s. 8)
 3. Employment Ordinance (Cap 57)

A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
 4. Factories and Industrial Undertakings Ordinance (Cap 59)
 - (a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation.
 - (b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.
 - (c) Under section 9A-
 - (i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace;
 - (ii) a refusal by the Commissioner for Labour to cancel a prohibition notice;
 - (iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.
 - (d) (Repealed 39 of 1997 s. 49)
 5. Quarries (Safety) Regulations (Cap 59 sub. leg. F)
 - (a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1).
 - (b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).
 6. Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap 59 sub. leg. Z)
 - (a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7.
 - (b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9.
 - (c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.
 - (d) A refusal by the Commissioner for Labour to renew or revalidate a person's registration as a safety officer under regulation 7B. (Added L.N. 100 of 2002)
 7. Weights and Measures Ordinance (Cap 68)

A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
 8. Miscellaneous Licences Ordinance (Cap 114)

The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.
 9. Control of Chemicals Ordinance (Cap 145) (Amended 23 of 2002 s. 14)

A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to-

 - (a) the issue of a licence or permit;

- (b) the refusal to issue a licence or permit;
 - (c) the cancellation or suspension of a licence or permit;
 - (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.
10. Gambling Ordinance (Cap 148) The decision under section 22 of the public officer appointed by the Secretary for Home Affairs as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence. (Amended 17 of 2011 s. 28)
11. Chinese Temples Ordinance (Cap 153) (a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1).
(b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12. Weapons Ordinance (Cap 217) A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13. Travel Agents Ordinance (Cap 218) A decision of the Registrar of Travel Agents-
(a) to refuse to grant a licence under section 12(1);
(b) to impose conditions on a licence under section 11(1) or 18;
(c) to refuse consent to a change of ownership or control under section 18(c);
(d) to suspend or revoke a licence under section 19.
14. Firearms and Ammunition Ordinance (Cap 238) (a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32.
(b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on.
(c) The imposition of a condition of licence which is considered to be unreasonable.
(d) A decision of the Commissioner referred to in section 34(1AA). (Added 14 of 2000 s. 33)
(e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be unreasonable. (Added 14 of 2000 s. 33)
15. Massage Establishments Ordinance (Cap 266) A decision of the licensing authority under section 6, 7, 8 or 9.
16. Grant Schools Provident Fund Rules (Cap 279 sub. leg. C) A question of interpretation or application of the Rules.
17. Subsidized Schools Provident Fund Rules (Cap 279 sub. leg. D) A decision of the Board under the Rules.
18. Mining Ordinance (Cap 285) The cancellation of an Authorized Buyer's Licence under section 41.
19. Mining (General) Regulations (Cap 285 sub. leg. A) A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be

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| | | payable. |
| 20. | Dangerous Goods Ordinance (Cap 295) | A decision under section 9 of an officer authorized under the Ordinance to issue a licence- (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence. |
| 21. | Dangerous Goods (General) Regulations (Cap 295 sub. leg. B) | Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127. |
| 22. | Business Registration Ordinance (Cap 310) | (a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business. (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business. (c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name. (Replaced 13 of 2010 s. 28) (d) The service of a notice under section 9(5) by the Commissioner of Inland Revenue that an exemption is not granted. (Added 23 of 2002 s. 14) |
| 23. | Motor Vehicles (First Registration Tax) Ordinance (Cap 330) | A decision of the Commissioner for Transport under the Ordinance. |
| 24. | Animals (Control of Experiments) Ordinance (Cap 340) | A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14. |
| 25. | Chinese Permanent Cemeteries Rules (Cap 1112 sub. leg. A) | A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board. Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purpose of section 22(5) of this Ordinance. |
| 26. | Sewage Services Ordinance (Cap 463) | A decision of the Drainage Authority under the Ordinance. (Added 105 of 1994 s. 15) |
| 27. | Timber Stores Ordinance (Cap 464) | A decision of the Director relating to- (a) an application for a licence under section 4; (b) an application for transfer of a licence under section 5; (c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. (Added 11 of 1995 s. 23) |
| 28. | Marine Parks Ordinance (Cap 476) | A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. (Added 37 of 1995 s. 36) |
| 29. | Personal Data (Privacy) Ordinance (Cap 486) | A decision of the Privacy Commissioner for Personal Data- (a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i); (b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii); |

- (c) to refuse under section 39(3) to carry out an investigation initiated by a complaint; (Amended 18 of 2012 s. 44)
 - (ca) to terminate under section 39(3A) an investigation initiated by a complaint; (Added 18 of 2012 s. 44)
 - (d) not to delete under section 46(5) a matter from a report under the Ordinance;
 - (e) not to serve an enforcement notice under section 47;
 - (f) to serve an enforcement notice under section 50. (Added 81 of 1995 s. 73)
30. Dutiable Commodities Ordinance (Cap 109) A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. (Added 46 of 1996 s. 43)
31. Dogs and Cats Ordinance (Cap 167)
- (a) A decision by a police officer or an authorized officer under section 6(1)(c)(i) or (ii) to destroy a dog.
 - (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance.
 - (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance.
 - (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance of a dog or cat or any other thing.
 - (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing.
 - (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. (Added 97 of 1997 s. 11)
32. Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg. E) A decision of the Commissioner for Transport under regulation 12L(1). (Added 25 of 2005 s. 40)
33. Child Care Services Ordinance (Cap 243) A decision of the Director of Social Welfare-
- (a) under section 7(2), refusing an application for registration;
 - (b) under section 9, cancelling a registration;
 - (c) under section 11B(3), refusing an application for exemption from registration;
 - (d) under section 11D, revoking an exemption from registration;
 - (e) under section 15B(2), determining a person to be unsuited to act as a childminder;
 - (f) under section 15C(4), refusing a request for the issue of a certificate;
 - (g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. (Added 38 of 1997 s. 19)
34. Wild Animals Protection Ordinance (Cap 170) A decision of the Director in relation to-
- (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or
 - (b) the cancellation of a permit or a special permit under

section 15A. (Added 77 of 1996 s. 22)

35. Occupational Safety and Health Ordinance (Cap 509) A decision of the Commissioner for Labour under Part III. (Added 39 of 1997 s. 49)
36. Ozone Layer Protection Ordinance (Cap 403) A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. (Added 6 of 1997 s. 10)
37. Human Reproductive Technology Ordinance (Cap 561) (a) A determination of the Council on Human Reproductive Technology referred to in section 28(5) to which section 28(6) applies.
(b) The suspension of a licence under section 29. (Added 47 of 2000 s. 48)
38. Freight Containers (Safety) Ordinance (Cap 506) A decision of the Director-
(a) (Repealed 14 of 2006 s. 20)
(b) under section 9, that an approval shall no longer be valid;
(c) under section 12 or 13, in an application for approval of an examination procedure;
(d) under sections 14 to 16, in relation to control of the use of a container;
(e) under section 23, in relation to an application for the review of a decision of an authorized person;
(f) under section 25, in relation to any request for exemption under that section. (Added 32 of 1997 s. 29)
39. Volunteer and Naval Volunteer Pensions Ordinance (Cap 202) A decision in a review under section 22. (Added 56 of 1997 s. 7)
40. Child Care Services Regulations (Cap 243 sub. leg. A) A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. (Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)
41. Prevention of Copyright Piracy Ordinance (Cap 544) A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. (Added 22 of 1998 s. 43)
42. Education Ordinance (Cap 279) (a) An attendance order made under section 74(1).
(b) A variation of an attendance order made under section 74(2). (Added 8 of 2001 s. 31)
43. Merchant Shipping (Local Vessels) Ordinance (Cap 548) A decision of the Director of Marine-
(a) to refuse to authorize under section 7 a person as a surveyor;
(b) to attach conditions to an authorization under section 7;
(c) to revoke an authorization under section 7;
(d) to serve a detention order;
(e) to give a direction under section 53(1)(a);
(f) to refuse to comply with a request under section 54(2);
(g) to refuse to grant permission under section 66;
(h) to attach conditions to a permission under section 66;
(i) to revoke a permission under section 66;
(j) to give a direction specified in an improvement notice under section 73(1). (Added 43 of 1999 s. 91)

44. Dangerous Dogs Regulation (Cap 167 sub. leg. D) A direction by an authorized officer under section 14 of the Regulation. (Added L.N. 185 of 2000)
45. Factories and Industrial Undertakings (Safety Management) Regulation (Cap 59 sub. leg. AF) (a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions.
(b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer.
(c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. (Added L.N. 298 of 1999)
46. Port Control (Cargo Working Areas) Regulations (Cap 81 sub. leg. A) A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. (Added L.N. 280 of 1999)
47. Karaoke Establishments Ordinance (Cap 573) A decision of the Secretary for Home Affairs or the Director of Food and Environmental Hygiene (as the case may be) under section 5, 6, 8, 9 or 10. (Added 22 of 2002 s. 22)
48. Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap 566) A determination or decision of the Director of Social Welfare under section 6(2)(b), 8(3)(b), 9(3)(b) or 14. (Added 10 of 2001 s. 33)
49. Road Traffic Ordinance (Cap 374) A decision of the Commissioner of Police under section 55(3). (Added 3 of 2002 s. 17)
50. Dutiable Commodities Regulations (Cap 109 sub. leg A) A forfeiture of security under regulation 27(2). (Added 23 of 2002 s. 14)
51. Security and Guarding Services Ordinance (Cap 460) A decision under section 14(5), 15(3), 16(4), 18(4), 21(2), 23(4), 24(4), 24A(13) or 25(4). (Added 23 of 2002 s. 14)
52. Merchant Shipping (Seafarers) Ordinance (Cap 478) A decision of the Superintendent of the Mercantile Marine Office-
(a) to refuse to grant a permit;
(b) to impose any condition under section 52(3);
(c) to refuse to approve any person for the purposes of section 57(1); or
(d) to cancel a permit. (Added 23 of 2002 s. 14)
53. Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap 478 sub. leg. J) A decision of the Seafarers' Authority under section 8(2) or 10(2) to refuse to issue a certificate or licence. (Added 23 of 2002 s. 14)
54. Merchant Shipping (Seafarers) (Tankers-Officers and Ratings) Regulation (Cap 478 sub. leg. K) A decision of the Seafarers' Authority to refuse to make an entry referred to in section 5(2) or (3) in an employment registration book, service record book or discharge book. (Added 23 of 2002 s. 14)
55. Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap 478 sub. leg. V) A decision of the Seafarers' Authority to refuse to issue an Engine Room Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)
56. Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Cap 478 sub. leg. W) A decision of the Seafarers' Authority to refuse to issue a Navigational Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)

57. Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Cap 478 sub. leg. Y) A decision of the Seafarers' Authority-
- (a) under section 6(3) to refuse an application for the grant of a certificate of competency as A.B.; or
 - (b) under section 10 (whether to confirm, vary or reverse the decision concerned of the examiner or to substitute another decision for that decision). (Added 23 of 2002 s. 14)
58. Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Cap 478 sub. leg. Z) A decision of the Seafarers' Authority-
- (a) to refuse to issue a certificate of proficiency in survival craft and rescue boats under section 4;
 - (b) to refuse to issue a certificate of proficiency in fast rescue boats under section 4A; or
 - (c) to cancel a certificate of proficiency in survival craft and rescue boats or a certificate of proficiency in fast rescue boats under section 7(2). (Added 23 of 2002 s. 14)
59. Marine Fish Culture Ordinance (Cap 353) A decision of the Director of Agriculture, Fisheries and Conservation-
- (a) to refuse to grant or renew a licence under section 8(6);
 - (b) to refuse to approve the transfer of a licence under section 8A(3)(b);
 - (c) to cancel a licence under section 9(1);
 - (d) to refuse to grant a permit under section 14(1);
 - (e) to cancel or refuse to renew a permit under section 14(2). (Added 10 of 2005 s. 230)
60. Land (Miscellaneous Provisions) Ordinance (Cap 28) A decision of the Director of Highways under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) or (i). (Added 17 of 2003 s. 15)
61. Adoption Ordinance (Cap 290) A decision of the Director of Social Welfare-
- (a) on the assessment of a person's suitability to be an adoptive parent;
 - (b) to terminate a placement;
 - (c) on a person's application to become or continue to be an accredited body; or
 - (d) to suspend or revoke a person's status as an accredited body,
- as referred to in section 30. (Added 28 of 2004 s. 35)
62. Medical Clinics Ordinance (Cap 343)
- (a) A refusal by the Registrar of Clinics under section 8 to grant or renew an exemption in respect of a clinic.
 - (b) A cancellation by the Registrar of Clinics under section 8 of an exemption granted in respect of a clinic.
 - (c) An order by the Registrar of Clinics under section 11 to refuse an application for the registration of a clinic or to cancel the registration of a clinic. (Added 10 of 2005 s. 7)
63. Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation relating to-
- (a) the refusal to issue a licence under section 23;
 - (b) an application to extend or renew a licence under section 24;

- (c) an application to vary a licence under section 24;
 - (d) any condition specified in a licence issued under section 23 or extended, renewed or varied under section 24; or
 - (e) the cancellation of a licence under section 26. (Added 3 of 2006 s. 58)
64. Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap 582) A decision of the Director of Marine under section 7(1)(a) or (c) or 8(2). (Added 13 of 2004 s. 18)
65. Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap 582 sub. leg. A) A decision of the Director of Marine under rule 27(1). (Added L.N. 130 of 2004)
66. Accreditation of Academic and Vocational Qualifications Ordinance (Cap 592) A decision of the Secretary for Education- (Amended L.N. 130 of 2007)
- (a) not to re-appoint an assessment agency under section 8(1);
 - (b) on the length of a term of re-appointment specified under section 8(1)(b);
 - (c) to impose any conditions or restrictions under section 8(1)(c) in re-appointing an assessment agency; and
 - (d) to cancel an appointment or re-appointment under section 8(5). (Added 6 of 2007 s. 51)
67. Genetically Modified Organisms (Control of Release) Ordinance (Cap 607)
- (a) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—
 - (i) under section 10(1)(a) on an application for approval of a genetically modified organism;
 - (ii) under section 11(5)(a) on a request to vary a prior decision on an application for approval of a genetically modified organism;
 - (iii) under section 12(1) to vary a prior decision on an application for approval of a genetically modified organism or on a request to vary such a prior decision.
 - (b) A direction of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—
 - (i) under section 12(7) on the safekeeping or disposal of a genetically modified organism or a container containing the organism;
 - (ii) under section 41(2) to dispose of a forfeited thing through repatriation or destruction.
 - (c) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation under section 16(3)(a) to enter certain information submitted for the approval of a genetically modified organism in the register. (Added 7 of 2010 s. 55)
68. Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605)
- (a) A decision of the Director of Marine or a person authorized under section 25(1) to refuse to issue an insurance certificate under section 16.
 - (b) A decision of the Director of Marine or a person authorized

- under section 25(1) to impose any condition under section 16.
 - (c) A decision of the Director of Marine or a person authorized under section 25(1) to cancel an insurance certificate under section 17.
 - (d) A decision of the Director of Marine to refuse to grant an exemption under section 23.
 - (e) A decision of the Director of Marine to impose any condition under section 23. (Added 14 of 2009 s. 40)
69. Residential Care Homes (Elderly Persons) Ordinance (Cap 459) A decision of the Director of Social Welfare under section 7, 8, 9 or 10(1). (Added 12 of 2011 s. 31)
70. Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613) A decision of the Director of Social Welfare under section 7, 8, 9(1), 11 or 12. (Added 12 of 2011 s. 31)
72. Fisheries Protection Ordinance (Cap 171) A decision of the Director of Agriculture, Fisheries and Conservation—
- (a) to refuse to register a vessel on application made under section 14, 19 or 21;
 - (b) to impose conditions under section 16;
 - (c) to add, remove or amend any conditions or refuse to do so under section 17;
 - (d) to cancel a registration under section 24;
 - (e) to refuse to issue or renew a research fishing permit under section 25;
 - (f) to impose conditions in respect of a research fishing permit under section 25(3); and
 - (g) to cancel a research fishing permit under section 29. (Added 13 of 2012 s. 20)

(Enacted 1994. Amended E.R. 1 of 2012)

Note:

- The following enactments also give a right of appeal to the Administrative Appeals Board-
- s. 19 of the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap 548 sub. leg. A).
 - s. 53 of the Merchant Shipping (Local Vessels)(Certification and Licensing) Regulation (Cap 548 sub. leg. D).
 - s. 11 of the Merchant Shipping (Local Vessels)(Typhoon Shelters) Regulation (Cap 548 sub. leg. E).
 - s. 47 of the Merchant Shipping (Local Vessels)(General) Regulation (Cap 548 sub. leg. F).
 - s. 86 of the Merchant Shipping (Local Vessels)(Safety and Survey) Regulation (Cap 548 sub. leg. G).
 - s. 10 of the Merchant Shipping (Local Vessels)(Compulsory Third Party Risks Insurance) Regulation (Cap 548 sub. leg. H).
 - s. 72 of the Merchant Shipping (Local Vessels)(Works) Regulation (Cap 548 sub. leg. I).
 - s. 42 of the Hazardous Chemicals Control Ordinance (Cap 595).

PESTICIDES (AMENDMENT) BILL 2013

IMPLICATIONS OF THE PROPOSAL

Financial and Civil Service Implications

At present, all pesticides controlled under the two Conventions are unregistered pesticides in Hong Kong and are already subject to permit control under the Ordinance. Between 2007 and 2011, there were only seven transshipment cases involving pesticides covered by the two Conventions. We therefore do not envisage that there will be significant increase in the number of applications for permit involving such pesticides upon commencement of the Bill. Any additional workload arising from the Bill will be absorbed by the existing resources of the AFCD and the Customs and Excise Department.

2. Currently, AFCD charges a fee of \$1280 for issuing a permit concerning an unregistered pesticide in the first instance and \$910 for extension. The same levels of fees will apply for issuing a permit for the use of an unregistered pesticide or for the import, manufacture, sale, possession, supply, use and export of a scheduled pesticide under the Bill. Separately, AFCD charges a fee of \$700 for issuing a permit concerning an unregistered pesticide imported or possessed only for re-export without re-packaging in the first instance and \$395 for extension. The same levels of fees will apply for issuing a permit concerning re-export and transshipment of a scheduled pesticide under the Bill. The proposal will result in an increase of annual revenue of about \$10,000. As the aforesaid existing fees have yet to attain their full cost recovery levels, they are being reviewed and, where necessary, will be revised to achieve the target of full-cost recovery.

Economic Implications

3. Between 2007 and 2011, there were only seven transshipment cases involving pesticides covered by the two Conventions. The Bill will therefore unlikely have significant impact on traders or carriers.

Sustainability Implications

4. The proposal will help ensure HKSAR's compliance with the requirements of the Stockholm Convention and Rotterdam Convention. This is in line with the sustainability principles of avoiding environmental problems for present and future generations, finding opportunities to enhance environmental quality, and providing a living environment which promotes and protects the public health of the people of Hong Kong.

Environmental Implications

5. By extending the scope of control to pesticides covered by the two Conventions, enactment of the Bill will help reduce environmental and public health risks resulting from these pesticides. The Bill itself does not have any environmental implications.
