

Bills Committee on Chinese Medicine (Amendment) Bill 2017

**The Government's Proposed Draft Committee Stage Amendments to the
Chinese Medicine (Amendment) Bill 2017**

The Government intends to propose certain Committee Stage Amendments (CSAs) to the Chinese Medicine (Amendment) Bill 2017. Having considered the comments of the trade, Members and Legal Adviser of the Bills Committee, we have prepared brief description of the full set of draft CSAs at **Annex I** for Members' reference. The draft CSAs are set out in **Annex II** and the marked-up copy incorporating the amendments¹ proposed by the draft CSAs is at **Annex III**.

Food and Health Bureau
9 February 2018

¹ The marked-up copy is for reference only. It would be necessary to check against the final version of the full set of CSAs to be moved by the Government.

**Proposed Committee Stage Amendments
to the Chinese Medicine (Amendment) Bill 2017 (the Bill)**

	Provisions to be amended	Brief description of the amendments
1.	Clause 4 of the Bill – new regulation 138A of the Chinese Medicine Ordinance (Cap. 549) (CMO)	Since the policy intent has not been changed, we propose to adopt the definition of “intermediate product” stipulated by the current CMO and replace “intended for use” with “to be used” to avoid causing ambiguity.
2.	Clause 4 of the Bill – new regulation 138L(1) of the CMO	In response to comments of Assistant Legal Adviser (ALA) of the Legislative Council – we propose to replace “證明” in the Chinese text with “確立” to align with the English text.
3.	Clause 4 of the Bill – new regulation 138L(2) of the CMO	In response to comments from ALA – we propose to replace “已證明” in the Chinese text with “已確立” to align with the English text.
4.	Clause 5 of the Bill – regulation 141(3) of the CMO	In response to comments from ALA – we propose to repeal the relevant finality provision to correctly reflect the policy intention.
5.	Clause 5(2) of the Bill – regulation 141 of the CMO	Consequential amendment made due to repealing regulation 141(3) of the CMO.

Chinese Medicine (Amendment) Bill 2017

Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 138A, in the definition of <i>intermediate product</i> , by deleting “intended for use” and substituting “to be used”.
4	In the proposed section 138L(1), in the Chinese text, by deleting “證明” and substituting “確立”.
4	In the proposed section 138L(2), in the Chinese text, by deleting “已證明” and substituting “已確立”.
5	By adding— “(1A) Section 141— Repeal subsection (3). ”
5(2)	By deleting “After section 141(3)” and substituting “At the end of section 141”.

1. Clause 4 of the Bill – new regulation 138A of the Chinese Medicine Ordinance (Cap. 549) (“CMO”)

Section:	138A	Interpretation		
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intermediate product (中間產品) means a substance or compound that is generated in the course of manufacture of a proprietary Chinese medicine and that is ~~intended for use to be used in~~ the further preparation or production process of the medicine.

2. Clause 4 of the Bill – new regulation 138L(1) of the CMO (for Chinese text only)

Section:	138L	Defence		
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- (1) 被控犯第138K條所訂罪行的人，如證明確立自己對有關不遵從或拒絕遵從有合理辯解，即可以此作為免責辯護。

3. Clause 4 of the Bill – new regulation 138L(2) of the CMO (for Chinese text only)

Section:	138L	Defence		
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- (2) 在以下情況下，第(1)款所述的人須視為已證明已確立自己對該項不遵從或拒絕遵從有合理辯解—
- 所舉出的證據，已足夠帶出該人有該合理辯解的爭論點；及
 - 控方沒有提出足以排除合理疑點的相反證明。

4. Clause 5 of the Bill – regulation 141(3) of the CMO

5. Clause 5(2) of the Bill – regulation 141 of the CMO

Section:	141	Right of appeal to Court of First Instance	L.N. 53 of 2003	30/04/2003
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- (1) A person aggrieved by any decision of the Medicines Board made under section 114, 115, 116, 121, 123, 124, 125, 129, 132, 135, 136, 139 or 140 may appeal to the Court of First Instance within 1 month from the date of service of the notice.
- (1A) A person aggrieved by a Chinese medicine safety order may appeal to the Court of First Instance against the order within 1 month from the date of service of the order on the person.
- (1B) A person aggrieved by a variation order may appeal to the Court of First Instance against the order within 1 month from the date of service of the order on the person.
- (2) The Court of First Instance may affirm, reverse or vary the decision appealed against.
- ~~(3) The decision of the Court of First Instance shall be final.~~
- (4) In this section—
- Chinese medicine safety order* (中藥安全令) means an order made under section 138B(1);
- variation order* (更改令) means an order made under section 138H(1).

Note:

Revisions made in blue are amendments proposed by the Chinese Medicine Ordinance (Amendment) Bill 2017.

Revisions made in red are amendments proposed by the Administration's CSAs.