

立法會
Legislative Council

LC Paper No. CB(2)845/2022(05)

Ref : CB2/SS/3/22

**Subcommittee on Dangerous Drugs Ordinance (Amendment of
First Schedule) Order 2022 and Control of Chemicals Ordinance
(Amendment of Schedule 2) Order 2022**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2022 (“the DDO Amendment Order”) and the Control of Chemicals Ordinance (Amendment of Schedule 2) Order 2022 (“the CCO Amendment Order”) and gives an account of past discussions of the Panel on Security (“the Panel”) on the proposed legislative amendments.

Background

Control of dangerous drugs and chemicals

2. The Dangerous Drugs Ordinance (Cap. 134) (“DDO”) is the principal legislation dealing with dangerous drugs. Under DDO, drugs or substances specified in Part I of the First Schedule are dangerous drugs. They are subject to the control and regulation by the Director of Health (“the Director”) that their manufacture, import, export and supply will require a licence. Trafficking, manufacturing, possession or consumption of dangerous drugs in contravention of DDO on conviction is a criminal offence.¹

¹ Illicit trafficking or manufacturing of dangerous drugs is liable to a maximum penalty of life imprisonment and a fine of \$5 million (on conviction on indictment). Possession or consumption of dangerous drugs in contravention of DDO is subject to a maximum penalty of seven years’ imprisonment and a fine of \$1 million (on conviction on indictment).

3. The Control of Chemicals Ordinance (Cap. 145) (“CCO”) seeks to control chemicals related to the manufacture of narcotic drugs or psychotropic substances. There are currently 33 controlled chemicals specified in Schedules 1, 2 and 3 to CCO, which are subject to different types of control.² The Customs and Excise Department (“C&ED”) is the licensing authority for CCO. Possession, manufacture, transporting, distribution, import or export of controlled chemicals in contravention of CCO on conviction is a criminal offence.³

4. The Administration has from time to time proposed amendments to DDO and CCO as appropriate to include new substances under statutory control, having regard to a host of relevant factors, including international control requirements (such as control measures under the three international drug control conventions of the United Nations (“the three UN Conventions”), namely, the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (“the 1961 Convention”), the Convention on Psychotropic Substances of 1971 (“the 1971 Convention”) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (“the 1988 Convention”)⁴, the uses and harmful effects of the substances, severity of abuse of the substances in the local and overseas contexts, advice of the Action Committee Against Narcotics⁵ and relevant authorities, etc.

² A licence or a permit is required to (a) supply, procure, deal in or with any substance specified in Schedule 1; (b) possess any substance specified in Schedule 1 unless it is in transit; (c) manufacture, import or export any substance specified in Schedule 1 or 2; (d) move and handle any substance specified in Schedule 1 or 2 transshipped in Hong Kong; and (e) export any substance specified in Schedule 3 to any country specified in the same Schedule. Separately, an approval in writing by the Commissioner of Customs and Excise is required for premises and containers in which substances specified in Schedule 1 or 2 are stored or kept.

³ Possession, manufacture, transporting or distribution of controlled chemicals for the unlawful production of dangerous drugs, and import or export of controlled chemicals not under and in accordance with a licence are liable to a maximum penalty of imprisonment for 15 years and a fine of \$1 million (on conviction on indictment).

⁴ The three UN Conventions, to which the People’s Republic of China is a party, are applied to the Hong Kong Special Administrative Region with effect from 1 July 1997. The inclusion in a specific schedule of the Conventions determines the control measures that States parties are required to apply to the respective substances.

⁵ This is a non-statutory advisory body on anti-drug matters.

Nature of cannabidiol and potential health impacts of products containing cannabidiol

5. Cannabis plants contain numerous cannabinoids. The most commonly known are tetrahydrocannabinol (“THC”) and cannabidiol (“CBD”). Cannabis and certain cannabis-related substances are currently subject to different levels of control measures under the three UN Conventions. At present, cannabis and THC are listed respectively in the schedules of the 1961 Convention and the 1971 Convention. In Hong Kong, cannabis and certain types of cannabinoids including THC are controlled under DDO.

6. According to a recent review on cannabis and cannabis-related components (including CBD) conducted by the Expert Committee on Drug Dependence (“ECDD”) of the World Health Organization (“WHO”), CBD is found in cannabis and cannabis resin (although it can also be produced synthetically). Pure CBD does not have psychoactive properties and has no potential for abuse and no potential to produce dependence. Adverse effects of CBD use include loss of appetite, diarrhoea and fatigue.⁶ At present, CBD in its pure state is not listed as a scheduled substance under the three UN Conventions. However, if prepared as an extract or tincture of cannabis,⁷ it is controlled in Schedule I of the 1961 Convention.

7. Locally, CBD is currently not a dangerous drug controlled under DDO. There is increasing public concern about the availability of different types of products containing CBD (“CBD Products”), including food, health supplements, skin care and beauty products, etc., for sale in the market. According to the Administration, while CBD can be chemically synthesized from other starting materials such as terpenes from non-cannabis botanicals (“synthetic CBD”), CBD that is added to various CBD Products is mainly extracted from cannabis plants (“CBD isolates”). Since it is very difficult to isolate pure CBD from cannabis, it is nearly inevitable that CBD Products contain certain levels of the dangerous drug THC. In addition, CBD could naturally decompose under normal storage conditions or be purposely converted through chemical process into THC. While any CBD Product containing THC is against DDO and there are other laws applicable to CBD Products under the respective areas of ensuring food safety

⁶ See the fortieth and forty-first reports of ECDD which can be accessed at WHO’s website at <https://apps.who.int/iris/handle/10665/279948?locale-attribute=en&> and <https://www.who.int/publications/i/item/who-expert-committee-on-drug-dependence-forty-first-report> respectively.

⁷ According to ECDD, extracts and tinctures of cannabis are preparations that have been extracted from the leaves and flowers of *Cannabis sativa*. They include cannabis oils, teas and Sativex[®] (an extract with approximately equal quantities of delta-9-THC and CBD).

and goods safety, and prohibiting the application of false trade descriptions,⁸ the Administration considers that there is a need to bring CBD, in both forms of CBD isolates and synthetic CBD, under the control of DDO to directly address the likely presence of THC in CBD Products and stem the supply of the substance.

The Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2022 and the Control of Chemicals Ordinance (Amendment of Schedule 2) Order 2022

8. The DDO Amendment Order and the CCO Amendment Order were published in the Gazette on 21 October 2022. The DDO Amendment Order is made by the Chief Executive under section 50(1) of DDO after consultation with the Executive Council on 11 October 2022. It adds CBD and other nine substances, namely, bupropion, clonazepam, CUMYL-PEGACLONE, diclazepam, diphenidine, flubromazepam, isotonitazene, MDMB-4en-PINACA and metonitazene, to Part I of the First Schedule to DDO as dangerous drugs. This apart, it rectifies textual inaccuracies regarding the Chinese characters and/or inconsistent usages of names of five dangerous drugs, namely, clobazam, difenoxin, nicocodine, nicomorphine(3,6-dinicotinoyl-morphine) and zipeprol, specified in seven items under the First Schedule to DDO.

9. The CCO Amendment Order is made by the Secretary for Security under section 18A(1) of CCO. It adds three precursor chemicals, namely, 4-anilinopiperidine, tert-butyl 4-(phenylamino)piperidine-1-carboxylate and norfentanyl, to Schedule 2 to CCO.

10. The above two Orders were tabled before the Legislative Council (“LegCo”) at its meeting of 26 October 2022 and are subject to negative vetting procedure. They will come into operation on 16 December 2022, except the provision relating to the control on CBD which will take effect on 1 February 2023.

Deliberations of the Panel

11. The Panel discussed issues relating to CBD in the context of receiving respective briefings from the Administration on the drug situation in Hong Kong

⁸ The laws applicable to non-pharmaceutical CBD Products include the Public Health and Municipal Services Ordinance (Cap. 132), the Food Safety Ordinance (Cap. 612), the Consumer Goods Safety Ordinance (Cap. 456), the Trade Descriptions Ordinance (Cap. 362), etc. As regards pharmaceutical products containing CBD, they are classified as Part 1 poison and prescription medicine under the Pharmacy and Poisons Ordinance (Cap. 138). To date, there is no registered pharmaceutical product containing CBD in Hong Kong.

in 2020 and on the Chief Executive's 2021 Policy Address. The Panel was consulted on the legislative proposal to bring the control of CBD under DDO and the legislative proposal to impose control on the other nine substances referred to in paragraph 8 above under DDO and on the three precursor chemicals referred to in paragraph 9 above under CCO on 7 June and 5 July 2022 respectively. The major views and concerns of members are summarized in the ensuing paragraphs.

Proposed amendments to the First Schedule to the Dangerous Drugs Ordinance and Schedule 2 to the Control of Chemicals Ordinance

12. Members supported the proposed amendments to tighten control of the nine substances and three precursor chemicals referred to in paragraphs 8 and 9 above respectively by including them in the First Schedule to DDO and Schedule 2 to CCO as appropriate based on the latest recommendations of ECDD of WHO⁹ and the International Narcotics Control Board.¹⁰ Given the increasing prevalence of CBD Products in the local market and that THC, a dangerous drug, had been found in quite some CBD Products sampled from the market, there had long been call from members that the Administration should tighten control of CBD. Members therefore welcomed the Administration's proposal of bringing CBD under control as a dangerous drug such that the manufacture, import, export, supply, sale, possession, transshipment, etc. of CBD (including any CBD Products) would be prohibited unless in accordance with DDO or a licence issued by the Director where appropriate.

13. On members' enquiry about the divergence in the control of CBD between Hong Kong and the Mainland, the Administration advised that the regulatory framework of CBD in the Mainland differed from the current Administration's legislative proposal as CBD was not listed as a scheduled substance under the three UN Conventions. In the Mainland, CBD was prohibited in designated types of products, such as food and cosmetic products.

14. In response to members' concern on the handling of CBD Products by the trade and members of the public in view of the proposed prohibition of possession of CBD for any purpose under DDO unless otherwise allowed, the

⁹ According to the forty-third and forty-fourth reports of ECDD of WHO, which can be accessed at <https://www.who.int/publications/i/item/9789240023024> and <https://www.who.int/publications/i/item/9789240042834> respectively, the nine substances referred to in paragraph 8 have presented significant harms to public health. These substances have been added to the respective UN Conventions.

¹⁰ International Narcotics Control Board is the independent monitoring body for the implementation of the three UN Conventions. Based on its recommendation, three precursor chemicals referred to in paragraph 9 that are used for the illicit manufacture of fentanyl have been added to Table I of the 1988 Convention.

Administration advised that reasonable time, say, three months, would be given for persons in possession of CBD Products to handle the products before the proposed prohibition coming into force. Holding the view that continued use of any remaining CBD Products was strongly discouraged and improper disposal of CBD Products might lead to the circulation of CBD Products in the community, members urged the Administration to study the feasibility of providing channels for proper disposal of CBD Products.

Enforcement and publicity of the proposed control of cannabidiol

15. Members noted that the Narcotics Division of the Security Bureau (“SB”) and the Department of Health (“DH”) had jointly issued an information note on CBD Products to members of the public.¹¹ The Narcotics Division and relevant government departments had also made use of different channels, including cooperating with media organizations to produce programmes and conduct interviews, using social media platforms for publicity, arranging online parental talks and themed seminars, etc., to strengthen understanding of the relevant issues by members of the public. However, they were concerned that certain CBD Products might bear health claims in which consumers believed in, and that illegal and online sales of CBD Products might facilitate acquisition of the products in Hong Kong. They urged the Administration to enhance related publicity and education and step up enforcement against CBD Products.

16. The Administration advised that it would launch publicity initiatives on the harmful effects of CBD and its products and the proposed prohibition of CBD. Regarding the claimed health benefits of CBD Products, various laws were applicable to regulate such claims, including those prohibiting the application of false trade descriptions and governing undesirable medical advertisements, pharmaceutical products and poisons. Enforcement actions had been taken by DH upon receipt of such complaints against CBD Products in the past and the products under complaint were eventually withdrawn from the market. As for illegal and online sales of CBD Products, law enforcement agencies (“LEAs”), including a special team of the Hong Kong Police Force (“the Police”) set up in 2008, had continued to conduct cyber patrols targeted at drugs.

17. There was an enquiry as to how members of the public could identify the presence of CBD in different products, especially when the sales of CBD Products would become less prominent after the implementation of the proposed control. Members were assured that the Administration would step up publicity to the public on the possible addition of CBD to various products. Since sellers of CBD Products would not highlight the presence of CBD as a selling point after the implementation of the proposed prohibition of CBD, members of the public

¹¹ The information note entitled “Information on Cannabidiol Products” can be accessed at https://www.drugoffice.gov.hk/eps/do/en/consumer/news_informations/index.html.

might report any sales of products suspected to contain CBD to LEAs in the future. LEAs would take necessary follow-up actions upon receipt of such reports, including testing of the products concerned and instituting prosecutions against those persons who had contravened the law. The Police and C&ED would continue to monitor the market and to take intelligence-led enforcement actions against CBD Products.

Use of cannabidiol for medical, research and commercial purposes

18. Members pointed out that the manufacture and use of some CBD pharmaceutical products had been approved in some overseas jurisdictions, for various purposes such as the treatment of epilepsy and spasticity induced by multiple sclerosis. Given that the proposal to bring CBD under control as a dangerous drug would not affect the registration and use of CBD pharmaceutical products in Hong Kong, they enquired about the mechanism in governing the supply of such products and their quality. The Administration advised that there was a registration system established under the Pharmacy and Poisons Ordinance (Cap. 138) for pharmaceutical products marketed in Hong Kong, including those containing CBD, to ensure their safety, efficacy and quality. Upon successful registration, information about the registered pharmaceutical product concerned (including its name and registration number) would be made available on the DH's website for public reference. The website also provided a search engine which linked to the medicine registration database maintained by DH.

19. In view of the Administration's initiatives to promote innovation and technology (including pharmaceutical and biopharmaceutical industries) in recent years, some members were concerned that the proposed prohibition of CBD would impede the trade, which involved the bringing of CBD Products into Hong Kong for the sole purposes of research and development as well as re-export to another country. The Administration assured members that the use of CBD for research purpose would be allowed with the grant of appropriate licences, and would not be hindered by the implementation of the proposed control of CBD under DDO. In respect of the trade of CBD Products, the Administration would communicate with the logistics industry to remind the industry of the relevant new statutory requirement in Hong Kong.

Latest development

20. According to the press release issued by the Administration on 20 October 2022,¹² in response to suggestions from the public on the disposal of CBD Products before the relevant control coming into force, the Administration has arranged placement of disposal boxes at 10 designated government premises

¹² The press release can be accessed at <https://www.info.gov.hk/gia/general/202210/20/>.

across the territory to facilitate the voluntary disposal of CBD Products from 27 October 2022 to 30 January 2023. Members of the public may contact the Narcotics Division of SB for further assistance relating to the disposal of CBD Products.

Relevant papers

21. A list of relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
3 November 2022

Appendix

Relevant papers on Dangerous Drugs Ordinance (Amendment of First Schedule) Order 2022 and Control of Chemicals Ordinance (Amendment of Schedule 2) Order 2022

Committee	Date of meeting	Paper
Panel on Security	4.5.2021 (Item IV)	Agenda Minutes
	25.10.2021 (Item I)	Agenda Minutes CB(2)1576/20-21(01)
	8.2.2022 (Item III)	Agenda Minutes
Council	23.2.2022	Official Record of Proceedings (Question 1)
	27.4.2022	Official Record of Proceedings (Question 20)
Panel on Security	7.6.2022 (Item III)	Agenda Minutes
	5.7.2022 (Item III)	Agenda Minutes CB(2)728/2022(01)