

CHEMICAL WEAPONS (CONVENTION) ORDINANCE

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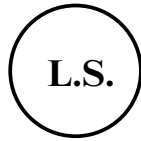
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 26 OF 2003



TUNG Chee-hwa
Chief Executive
10 July 2003

An Ordinance to promote the control of chemical weapons and of certain chemicals capable of being used as chemical weapons, and for matters related thereto or connected therewith.

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Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Chemical Weapons (Convention) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “aircraft” (航空器) means any machine which can derive support in the atmosphere from reactions of the air;
 - “article” (物品) includes a substance and a document;
 - “authorized officer” (獲授權人員) means a person authorized by the Commissioner under section 3;
 - “cargo” (貨物) has the meaning assigned to it by section 2 of the Import and Export Ordinance (Cap. 60);

“chemical weapons” (化學武器) means—

- (a) toxic chemicals and their precursors, except where the toxic chemicals and their precursors are—
 - (i) intended for purposes not prohibited under the Convention; and
 - (ii) in types and quantities consistent with those purposes;
- (b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of toxic chemicals—
 - (i) specified in paragraph (a); and
 - (ii) which would be released as a result of the employment of the munitions and devices; or
- (c) any equipment specifically designed for use directly in connection with the employment of the munitions and devices specified in paragraph (b);

“Chief Secretary” means the Chief Secretary for Administration;

“claimant” (申索人) means a person—

- (a) who claims to be the owner of an article, vessel or vehicle liable to forfeiture under Part 6;
- (b) who is the authorized agent of a person claiming to be the owner of an article, vessel or vehicle liable to forfeiture under Part 6;
- (c) who was in possession of an article, vessel or vehicle at the time of seizure of the article, vessel or vehicle liable to forfeiture under Part 6; or
- (d) who claims to have a legal or equitable interest in an article, vessel or vehicle liable to forfeiture under Part 6,

and who makes a claim under that Part;

“Commissioner” (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise;

“Convention” (《公約》) means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993, as in force from time to time;

“court” (法庭、法院) includes a magistrate;

“declared facility” (已宣布設施) means a Schedule 1, 2 or 3 facility or any other chemical production facility;

“Director” (署長) means the Director-General of Trade and Industry, any Deputy Director-General of Trade and Industry or any Assistant Director-General of Trade and Industry;

“discrete organic chemical” (特定有機化學品) means any chemical—

- (a) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates; and

- (b) identifiable by—
 - (i) chemical name;
 - (ii) structural formula, if known; and
 - (iii) Chemical Abstracts Service registry number, if assigned;

“document” (文件), in addition to a document in writing, includes—

- (a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
- (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;

“domestic premises” (住用處所) means any premises which are constructed or intended to be used for habitation;

“facility” (設施) means any plant site, plant or unit;

“in-country escort” (國內陪同人員) means individuals specified by the inspected state party and, if appropriate, by the People’s Republic of China, if they so wish, to accompany and assist the inspection team during the period from the arrival of the inspection team at a point of entry into Hong Kong until the inspection team’s departure from Hong Kong at a point of entry;

“inspected state party” (被視察締約國)—

- (a) subject to paragraph (b), means the state party—
 - (i) on whose territory or in any other place under its jurisdiction or control an inspection pursuant to the Convention takes place; or
 - (ii) whose facility or area on the territory of the People’s Republic of China is subject to such an inspection;
- (b) does not include the state party specified in Part II, paragraph 21, of the Annex on Implementation and Verification to the Convention;

“inspection team” (視察組) means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat of the Organization to conduct a particular inspection;

“master” (船長), in relation to a vessel, means the person (except a pilot) having for the time being command or charge of the vessel;

“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);

“operator” (營運人), in relation to a facility—

- (a) means the person or persons (whether an individual, a body corporate, or otherwise, or any combination thereof) having responsibility, as distinct from day-to-day management, in relation to operations carried on at the facility;
- (b) includes the legal personal representative, administrator and other successor in title of any such person;

“Organization” (本組織) means the Organization for the Prohibition of Chemical Weapons established pursuant to Article VIII of the Convention;

“other chemical production facility” (其他化學生產設施) means a facility covered by a notification required under section 11(1)(a);

“owner” (擁有人), other than for the purposes of Part 6, means—

- (a) in relation to an article, any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the article; and
- (b) in relation to a vessel, aircraft or vehicle—
 - (i) the registered owner and any person holding himself out to be the owner thereof;
 - (ii) any person acting as agent for the owner in connection with the handling of cargo carried in or on the vessel, aircraft or vehicle;
 - (iii) any person to whom the vessel, aircraft or vehicle has been chartered or hired; and
 - (iv) any person having for the time being the control or management of the vessel, aircraft or vehicle;

“permit” (許可證) means a permit granted under section 10(1)(a);

“plant” (車間) means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, including any—

- (a) small administrative section;
- (b) storage or handling areas for feedstock and products;
- (c) effluent or waste handling or treatment area;
- (d) control or analytical laboratory;
- (e) first aid service or related medical section; and
- (f) records associated with the movement into, around and from the area, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate;

“plant site” (廠區) means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, including any—

- (a) administration and other offices;
- (b) repair and maintenance shops;

- (c) medical centre;
- (d) utilities;
- (e) central analytical laboratory;
- (f) research and development laboratories;
- (g) central effluent and waste treatment area; and
- (h) warehouse storage;

“practicable” (切實可行) means reasonably practicable;

“precursor” (前體)—

- (a) means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical; and
- (b) includes any key component of a binary or multicomponent chemical system;

“purposes not prohibited under the Convention” (《公約》不禁止的目的) means—

- (a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
- (b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
- (d) law enforcement including domestic riot control purposes;

“regulations” (規例) means regulations made under section 42;

“restore” (歸還), in relation to an article, vehicle or vessel, includes arranging for the restoration of the article, vehicle or vessel;

“Schedule 1 chemical” (附表 1 化學品) means a chemical listed in Schedule 1;

“Schedule 1 facility” (附表 1 設施) means a facility covered by a permit required under section 8(1)(a);

“Schedule 2 chemical” (附表 2 化學品) means a chemical listed in Schedule 2;

“Schedule 2 facility” (附表 2 設施) means a facility covered by a permit required under section 8(1)(b);

“Schedule 2 permit threshold” (附表 2 許可限量), in relation to a Schedule 2 chemical, means—

- (a) if the chemical is listed in Part A of Schedule 2 and designated with an “*”, 1 kilogram;
- (b) if the chemical is listed in Part A of Schedule 2 but is not designated with an “*”, 100 kilograms;
- (c) if the chemical is listed in Part B of Schedule 2, 1 tonne;

“Schedule 3 chemical” (附表 3 化學品) means a chemical listed in Schedule 3;

“Schedule 3 facility” (附表 3 設施) means a facility covered by a permit required under section 8(1)(c);

“specified” (指明), in relation to a form, means specified under section 39;

“toxic chemical” (有毒化學品) means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals, regardless of—

- (a) its origin or method of production; and
- (b) whether it is produced in facilities, in munitions or elsewhere;

“unit” (單元) means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical;

“unscheduled discrete organic chemical” (未列於附表的特定有機化學品) means a discrete organic chemical not listed in Schedule 1, 2 or 3;

“vehicle” (車輛) means every means of conveyance or of transit or other mobile apparatus used or capable of being used on land, whether on roads or rails and, in any way whatever, drawn or propelled or carried;

“vessel” (船隻) includes every description of vessel used in navigation for the carriage of persons or articles, whether or not the vessel is mechanically propelled and whether or not the vessel is towed or pushed by another vessel.

(2) Unless the context otherwise requires, a term used in this Ordinance and in the Convention but which is not defined in subsection (1) (whether or not a particular meaning is assigned to it by the Convention) has, in this Ordinance, the same meaning as in the Convention. [*cf. Chemical Weapons (Prohibition) Act 1994, s. 7(2), Commonwealth of Australia*]

(3) For the purposes of this Ordinance, in determining—

- (a) the total amount of Schedule 1 chemicals that will be, or were, produced, acquired, retained or used at, or transferred from, a facility; or
- (b) the total amount of Schedule 2 chemicals that will be, or were, produced, processed or consumed, at a facility,

any amount of such a chemical that is, or was, subjected to more than one of those activities at that facility is to be counted once only. [*cf. Chemical Weapons (Prohibition) Act 1994, s. 10(1), Commonwealth of Australia*]

(4) For the purposes of—

- (a) Schedules 1, 2 and 3, whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted;
- (b) Schedule 2, a chemical marked “*”, is subject to special thresholds for declaration and verification, as specified in Part VII of the Annex on Implementation and Verification to the Convention.

(5) For the avoidance of doubt, it is hereby declared that the provisions of this Ordinance applicable to chemical weapons are also applicable to abandoned chemical weapons and old chemical weapons to the extent that the provisions may practicably apply to abandoned chemical weapons and old chemical weapons respectively.

3. Power of Commissioner to appoint authorized officers

The Commissioner may authorize in writing—

- (a) any public officer employed in the Customs and Excise Department in the Trade Controls Officer Grade;
- (b) any police officer of the rank of inspector or above;
- (c) any police officer who for the time being is a member of that part of the police force known as the Explosive Ordnance Disposal Bureau,

to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by this Ordinance.

4. Power of Director to appoint public officers to exercise powers and perform duties conferred or imposed on the Director by this Ordinance

The Director may authorize in writing any public officer employed in the Trade and Industry Department in the Trade Officer Grade, or any public officer acting in the capacity of Principal Trade Officer in the Trade and Industry Department, to exercise any of the powers and perform any of the duties conferred or imposed on the Director by this Ordinance.

PART 2

CHEMICAL WEAPONS

5. Use, etc., of chemical weapons

No person shall—

- (a) use a chemical weapon;
- (b) develop or produce a chemical weapon;
- (c) acquire, stockpile or retain a chemical weapon;

- (d) participate (whether directly or indirectly) in the transfer of a chemical weapon;
- (e) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon; or
- (f) assist, encourage or induce, in any way, anyone to engage in any activity prohibited under this section.

[*cf. 1996 c. 6 s. 2(1) U.K.*]

6. Application of section 5

(1) Section 5 applies to—

- (a) acts done in Hong Kong; and
- (b) acts done outside Hong Kong by Chinese nationals who are Hong Kong permanent residents.

(2) Proceedings for an offence committed under section 5 where subsection (1)(b) is applicable may be taken, and the offence may for incidental purposes be treated as having been committed, in Hong Kong.

[*cf. 1996 c. 6 s. 3(1), (2) & (5) U.K.*]

7. Notification of finding of article believed to be chemical weapon

(1) Where a person finds an article that the person reasonably believes may be a chemical weapon, the person shall, except in the exercise of any of the duties conferred on him under this Ordinance, as soon as is practicable notify a member of the Customs and Excise Service, an authorized officer or a police officer of the finding, and of the whereabouts, of the article.

(2) A member of the Customs and Excise Service, an authorized officer or a police officer notified under subsection (1) shall as soon as is practicable notify the Commissioner of the matter of which the member or officer has been so notified.

[*cf. Chemical Weapons (Prohibition) Act 1994, s. 13, Commonwealth of Australia*]

PART 3

PERMITS

8. When permit is required

(1) The operator of a facility requires a permit to operate the facility during a particular year if—

- (a) Schedule 1 chemicals (other than excluded Schedule 1 chemicals) are likely to be produced, acquired, retained or used at, or transferred from, the facility during the year;
 - (b) an amount of a Schedule 2 chemical exceeding, in the aggregate, the Schedule 2 permit threshold for that chemical is likely to be produced, processed or consumed at a plant comprising, or comprising part of, the facility during the year; or
 - (c) an amount of a Schedule 3 chemical exceeding, in the aggregate, 30 tonnes of that chemical is likely to be produced at a plant comprising, or comprising part of, the facility during the year.
- (2) For the purposes of subsection (1)(a), Schedule 1 chemicals are excluded chemicals in relation to a facility and to a year if—
- (a) the total amount of those chemicals likely to be acquired, retained or used at, or transferred from, the facility during the year does not exceed 100 grams;
 - (b) the Schedule 1 chemicals will not be produced at the facility during that year; and
 - (c) the Schedule 1 chemicals are intended only to be put to research, medical or pharmaceutical purposes.
- (3) A reference in this section to a year during which chemicals will be produced, acquired, retained or otherwise dealt with (however that dealing is described) includes a reference to a year that occurs in part before the day on which this section commences.

[*cf. Chemical Weapons (Prohibition) Act 1994, s. 16, Commonwealth of Australia*]

9. Application for permit

An application for a permit shall be made in the specified form to the Director and accompanied by the fee specified in Schedule 4.

10. Grant of permit, etc.

- (1) The Director shall, as soon as is practicable after receiving an application under section 9, by notice in writing served on the applicant—
- (a) grant a permit to the applicant subject to such conditions, if any, as the Director thinks fit and specified in the permit; or
 - (b) refuse to grant a permit.
- (2) A permit to operate a facility during a year shall not be granted unless the Director is satisfied that—
- (a) in respect of Schedule 1 chemicals, those chemicals concerned are to be—

- (i) produced for research, medical or pharmaceutical purposes;
or
 - (ii) acquired, retained, used or transferred for research, medical, pharmaceutical or protective purposes; and
 - (b) in respect of Schedule 1 chemicals, Schedule 2 chemicals and Schedule 3 chemicals, the operator of the facility will, if granted a permit, comply with the provisions of this Ordinance applicable to or in relation to the facility. [*cf. Chemical Weapons (Prohibition) Act 1994, s. 19(2), Commonwealth of Australia*]
- (3) The Director may—
- (a) by notice in writing served on the holder of a permit and, subject to subsection (5), with effect from the date specified in the notice, revoke or suspend the permit, amend conditions specified in the permit, add conditions to the permit, or delete conditions specified in the permit, if the Director is satisfied that—
 - (i) the holder has failed to comply with—
 - (A) any of the provisions of this Ordinance applicable to or in relation to the facility; or
 - (B) any conditions specified in the permit; or
 - (ii) it is appropriate to do so for the purpose of implementing the requirements of the Convention;
 - (b) by notice in writing served on the holder of a permit and with effect from the date specified in the notice, revoke the permit, amend conditions specified in the permit, add conditions to the permit, or delete conditions specified in the permit, at the request of the holder; or
 - (c) by notice in writing served on the holder of a permit and, subject to subsection (5), with effect from the date specified in the notice, revoke or suspend the permit if the applicant has furnished to him any false, misleading or inaccurate information in connection with the application for the granting of the permit.
- (4) Where the Director—
- (a) grants a permit subject to conditions;
 - (b) refuses to grant a permit;
 - (c) revokes or suspends under subsection (3)(a) or (c) a permit;
 - (d) amends under subsection (3)(a) conditions specified in a permit;
or
 - (e) adds under subsection (3)(a) conditions to a permit,
- he shall, in the notice under subsection (1) or (3)(a) or (c) concerned, specify the reasons for the conditions, refusal, revocation or suspension, amendment or addition, as the case may be.

- (5) A notice under subsection (3)(a) or (c) shall—
- (a) subject to paragraph (b), not take effect—
 - (i) before the expiry of the period specified in section 38 within which an appeal against the decision to which the notice relates may be made;
 - (ii) if such an appeal is made, before the outcome of the appeal or the withdrawal or abandonment of the appeal;
 - (b) take effect immediately it is served if—
 - (i) there is a statement in the notice that the Director is of the opinion that the notice should take effect as a matter of urgency; and
 - (ii) the notice sets out the reasons why the Director is of that opinion.

PART 4

NOTIFICATIONS AND REPORTS IN RESPECT OF FACILITIES

11. Notification to Director

- (1) Subject to subsection (2), the operator of a facility shall—
- (a) notify the facility to the Director in the specified form if—
 - (i) the amount of unscheduled discrete organic chemicals produced at the facility during the year before the notification (whether that year ended before or after this section commences) was more than 200 tonnes; or
 - (ii) the amount of a particular unscheduled discrete organic chemical—
 - (A) that was produced at a plant comprising, or comprising part of, the facility during that year; and
 - (B) that contained one or more of the elements phosphorus, sulphur or fluorine, was more than 30 tonnes,and the notification shall be given not later than the last day of January immediately following that year;
 - (b) if required to notify the Director under paragraph (a), keep for not less than 3 years after the particular year to which they relate such records—
 - (i) as are required by the Director; and
 - (ii) in relation to—

(A) the facility, the plant or plants comprising, or comprising part of, the facility during a particular year; and

(B) those chemicals dealt with at the facility during that particular year.

(2) Subsection (1)(a) does not apply if the facility was, in the year before the year in which it is notified, only producing hydrocarbons or explosives.

[*cf. Chemical Weapons (Prohibition) Act 1994, s. 28(6) & (7), Commonwealth of Australia*]

12. Reports to be submitted by permit holders

(1) This section applies to a facility in respect of which there is or was a permit to operate the facility during a particular year.

(2) The operator of a facility to which this section applies shall—

(a) give to the Director, at such intervals as are prescribed such particulars as are required by the Director, in relation to—

(i) the location, ownership and operation of the facility during the particular year;

(ii) the plant or plants comprising, or comprising part of, the facility during the particular year;

(iii) those chemicals dealt with at that facility during the particular year;

(iv) the purposes to which those chemicals are put; and

(v) such other matters relevant to a declaration required to be given to the Organization under the Convention as are prescribed;

(b) keep for not less than 3 years after the particular year to which they relate such records in relation to the facility, plants, and those chemicals, referred to in paragraph (a), as are required by the Director; and

(c) prepare and give to the Director from such records—

(i) such periodic reports, and such special reports, relating to the facility, plants, and those chemicals, referred to in paragraph (a), as are required by the Director; and

(ii) in such circumstances and within such periods as are prescribed.

[*cf. Chemical Weapons (Prohibition) Act 1994, s. 30(1)(a) & (2), Commonwealth of Australia*]

13. Director may seek information for declarations

(1) This section applies if the Director has reasonable grounds to believe that a person, including the operator of a facility to which section 12 applies, is capable of giving information that is relevant to a declaration required to be given to the Organization under Article VI of the Convention.

(2) The Director may, by notice in writing given to the person, require the person to give such information to the Director—

(a) if the person is a natural person, by writing signed by the person;
or

(b) if the person is a body corporate, by writing signed by an officer authorized to sign on behalf of the body corporate,

within such reasonable period and in such manner as is specified in the notice.

(3) The Director may, by notice in writing given to the person, require the person to give to the Director particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.

(4) The power of the Director under this section to require a person to give information or documents to the Director is in addition to—

(a) any obligation to give information or documents that the person may have under section 11 or 12;

(b) any other power the Director has under this Ordinance to require the person to give information or documents.

[*cf. Chemical Weapons (Prohibition) Act 1994, s. 31(1), (2), (3) & (5), Commonwealth of Australia*]

PART 5

POWERS OF INVESTIGATION

14. General powers of members of the Customs and Excise Service, etc.

(1) Without prejudice to the powers conferred by section 15, a member of the Customs and Excise Service or an authorized officer may, for the purposes of this Ordinance—

(a) enter at any reasonable time and search any premises or place where a declared facility is located;

(b) stop, board and search any vessel, aircraft or vehicle;

(c) require the production or furnishing of—

(i) any permit;

- (ii) any document which relates to the origin or nature of any article or which he reasonably suspects to be relevant to an offence under this Ordinance;
 - (iii) any document required to be kept by this Ordinance; or
 - (iv) any information that is relevant to a declaration required to be given to the Organization under the Convention;
- (d) examine and take copies of any permit or of any document referred to in paragraph (c);
- (e) require any information relating to any permit or any document referred to in paragraph (c)(i), (ii) or (iii), or any information which is information referred to in paragraph (c)(iv), that is—
- (i) contained in a computer in, on or accessible from the premises, place, vessel, aircraft or vehicle entered or boarded under this section; or
 - (ii) contained in any device found in or on the premises, place, vessel, aircraft or vehicle entered or boarded under this section and which is capable of being retrieved on a computer,
- to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in visible and legible form, and examine the information;
- (f) require any information described in paragraph (e) to be produced in a form in which it can be taken away and in which it is either capable of being retrieved on a computer or visible and legible;
- (g) take away the copy so produced under paragraph (f);
- (h) inspect or examine any article which he reasonably suspects to be relevant to an offence under this Ordinance;
- (i) take, without payment but subject to the issue of an official receipt for it, a sample of any article referred to in paragraph (h);
- (j) inspect or examine any article if he considers it necessary to do so to ascertain whether or not the provisions of this Ordinance are being, or have been, complied with by any person in respect of that article;
- (k) operate any equipment, including electronic equipment, located at the facility if he believes, on reasonable grounds, that the equipment can be operated without damaging it; or
- (l) stop and search any person entering or leaving Hong Kong whom he reasonably suspects of having committed an offence under this Ordinance; but no person shall be searched except by a person of the same sex, or be searched in a public place if he objects to being so searched.

(2) A member of the Customs and Excise Service or an authorized officer may require—

- (a) any person to whom a permit has been granted; and
- (b) any servant, employee or agent of any person referred to in paragraph (a),

to furnish such information or take such action as may be necessary to enable the member of the Customs and Excise Service or the authorized officer to exercise the powers conferred on him under this Ordinance.

(3) When a sample of any article has been taken by a member of the Customs and Excise Service or an authorized officer pursuant to subsection (1)(i) the Commissioner may, after examination and investigation of it, direct that the sample be returned to the owner thereof or disposed of in such manner as the Commissioner thinks fit.

15. Entry and search of premises; detention and search of vessels, etc.

(1) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in or on any premises or place any article which may be seized under section 16, or any person who may be arrested under section 18, issue a warrant authorizing a member of the Customs and Excise Service or an authorized officer to enter and search the premises or place.

(2) If the Commissioner reasonably suspects—

- (a) that—
 - (i) there is in or on any premises or place any article which may be seized under section 16; or
 - (ii) there is in, on or accessible from any premises or place a computer containing any information of a kind specified in section 16(2), or there is in or on any premises or place any device which contains any such information in a form in which it is capable of being retrieved on a computer; and
- (b) that unless the premises or place are entered and searched immediately, the article is likely to be removed from the premises or place or the information is likely to be destroyed or rendered incapable of being retrieved on a computer,

he may authorize in writing a member of the Customs and Excise Service or an authorized officer to enter and search the premises or place.

(3) Subject to subsection (4), a member of the Customs and Excise Service or an authorized officer may, if he reasonably suspects that there is in or on any vessel, aircraft or vehicle any article which may be seized under section 16, stop, board, remove, detain and search the vessel, aircraft or vehicle.

- (4) Subject to subsections (5) and (6), subsection (3) does not authorize—
- (a) the detention for more than 12 hours of any vessel;
 - (b) the detention for more than 6 hours of any aircraft; or
 - (c) the detention for more than 12 hours of any vehicle.

(5) The Chief Secretary may, by order in writing under the hand of the Chief Secretary, detain a vessel referred to in subsection (4)(a) for further periods of not more than 12 hours each or detain an aircraft referred to in subsection (4)(b) for further periods of not more than 6 hours each, and any such order made by the Chief Secretary shall state the times from which and for which the order shall be effective.

(6) The Commissioner may, by order in writing under the hand of the Commissioner, detain a vehicle referred to in subsection (4)(c) for further periods of not more than 12 hours each, and any such order made by the Commissioner shall state the times from which and for which the order shall be effective.

16. Power to seize articles, etc., or require production of information

(1) A member of the Customs and Excise Service or an authorized officer may—

- (a) seize any article in respect of which he reasonably suspects that an offence has been committed under this Ordinance, or which he reasonably suspects to be, or to contain, evidence of the commission of such an offence; or
- (b) seize any vessel or vehicle if he reasonably suspects the vessel or vehicle to have been used in connection with the commission of an offence under this Ordinance.

(2) Where a member of the Customs and Excise Service or an authorized officer reasonably suspects, as regards any information that is contained in a computer in, on or accessible from any premises, place, vessel, aircraft or vehicle entered or boarded under section 15, that the information relates to an offence which has been, or may have been, committed under this Ordinance, the member or officer—

- (a) may require the information to be produced on a computer in or on the premises, place, vessel, aircraft or vehicle in a visible and legible form, and may examine the information; or
- (b) may require the information to be produced in a form in which it can be taken away and in which it is either visible and legible or capable of being retrieved on a computer, and may take away the copy so produced.

(3) In subsection (2), a reference to information contained in a computer in or on any declared premises, place, vessel, aircraft or vehicle entered or boarded under section 15 includes a reference to information which is contained in any device found in or on such premises, place, vessel, aircraft or vehicle and which is capable of being retrieved on a computer.

(4) The owner of any article or document seized by a member of the Customs and Excise Service or an authorized officer under this section may, on application to the Commissioner and subject to such conditions as the Commissioner may impose, photograph or make any other form of copy of the seized article or document.

(5) Where any article, vessel or vehicle seized by a member of the Customs and Excise Service or an authorized officer under this section—

(a) is not, or is no longer, required for the purposes of any investigation or criminal proceedings under this Ordinance or any other enactment; and

(b) is not liable to forfeiture under this Ordinance or any other enactment,

then the Commissioner shall, as soon as is reasonably practicable, restore the article, vessel or vehicle to the person who appears to him to be the owner thereof or the authorized agent of the owner.

17. Inspection and storage of controlled articles

(1) For the purpose of determining whether or not an article is a controlled article, the prescribed person in respect of the article shall, if required to do so by the Commissioner, a member of the Customs and Excise Service of or above the rank of Inspector or an authorized officer, produce it for inspection by the Commissioner, member or officer.

(2) The Commissioner, a member of the Customs and Excise Service of or above the rank of Inspector or an authorized officer shall determine whether or not any article produced to him for inspection under subsection (1) is a controlled article.

(3) The prescribed person in respect of a controlled article shall, if required to do so by the Commissioner, a member of the Customs and Excise Service of or above the rank of Inspector or an authorized officer, cause such article to be stored in a place specified by the Commissioner, member or officer under such conditions as he may impose.

(4) An article stored in a specified place in accordance with the directions of the Commissioner, a member of the Customs and Excise Service of or above the rank of Inspector or an authorized officer under subsection (3) shall not be removed from that place unless the Commissioner, member or officer has authorized in writing the removal of the article.

(5) Any person authorized in writing under subsection (4) to remove an article from a specified place shall comply with such conditions as may be imposed by the Commissioner, a member of the Customs and Excise Service of or above the rank of Inspector or an authorized officer on the removal of the article.

(6) Where—

- (a) the Commissioner has been notified under section 7(2) in relation to an article; and
- (b) the identity of the person, if any, in possession or control of the article has not been able to be ascertained after reasonable inquiries for the purpose have been made by a member of the Customs and Excise Service or an authorized officer,

then the Commissioner may nominate in writing a public officer to be the person deemed to be in possession or control of the article for the purposes of this section.

(7) In this section—

“controlled article” (受管制物品) means any article—

- (a) which is a chemical weapon, a Schedule 1 chemical, a Schedule 2 chemical or a Schedule 3 chemical; or
- (b) in respect of which an offence has been committed under this Ordinance;

“prescribed person” (訂明人士), in relation to an article, means—

- (a) the person in possession or control of the article; or
- (b) the person deemed under subsection (6)(b) to be in possession or control of the article.

18. Powers of arrest

(1) Subject to subsection (2), a member of the Customs and Excise Service or an authorized officer may, without warrant, arrest, or detain for such period as is reasonably necessary for further inquiries to be carried out, any person whom he reasonably suspects of having committed any offence under this Ordinance.

(2) A member of the Customs and Excise Service or an authorized officer who arrests any person under subsection (1) shall take the person to a police station or, if further inquiries are necessary, first to the office of the Customs and Excise Service or the office of an authorized officer and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance (Cap. 232); but in no case shall any person be detained for more than 48 hours without being charged and brought before a magistrate.

(3) If any person forcibly resists or attempts to evade arrest under this section, the member of the Customs and Excise Service or the authorized officer may use such force as is reasonably necessary to effect the arrest.

(4) If a member of the Customs and Excise Service or an authorized officer has reason to believe that a person whom he intends to arrest (in this section referred to as “the suspected offender”) has entered into or is in any premises or place, any person residing in or in charge of such premises or place shall, on demand by the member or officer, allow him free entry thereto and afford all reasonable facilities to search for the suspected offender in those premises or that place.

(5) If entry to such premises or place cannot be obtained under subsection (4), a member of the Customs and Excise Service or an authorized officer, in any case in which a warrant to enter and search such premises or place may be issued under section 15(1) but cannot be obtained without affording the suspected offender an opportunity to escape, may enter the premises or place and search for the suspected offender and for the purpose of entry or search may break open any outer or inner door or window of the premises or place.

19. Ancillary powers of investigation

(1) A member of the Customs and Excise Service or an authorized officer may—

- (a) use such force as is reasonably necessary to enter any premises or place which he is empowered by this Ordinance to enter and search;
- (b) use such force as is reasonably necessary to stop, board, remove, detain and search any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board, remove, detain and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;
- (d) for the purposes of carrying out a search of any premises or place which he is empowered by this Ordinance to search, detain during such period as is reasonably required to permit the search to be carried out any person who—
 - (i) may appear to have in his possession or under his control any document as is mentioned in section 14(1)(c), any article as is mentioned in section 16(1)(a) or any computer or device as is mentioned in section 14(1)(e) or 16(2) and (3); and
 - (ii) if not so detained, might prejudice the purpose of the search;

- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle which he is empowered by this Ordinance to stop, board and search until it has been searched;
 - (f) search the person and property and effects of any person whom he reasonably suspects of being guilty of an offence under this Ordinance; but no person shall be searched except by a person of the same sex, or be searched in a public place if he objects to being so searched.
- (2) A member of the Customs and Excise Service or an authorized officer who is authorized—
- (a) under section 14(1)(b), to search any vessel, aircraft or vehicle;
 - (b) under section 14(1)(d) or (e), to examine any document or information;
 - (c) under section 14(1)(j), to examine any article;
 - (d) under section 14(1)(k), to operate any equipment;
 - (e) under section 15, to enter and search any premises or place or to search any vessel, aircraft or vehicle; or
 - (f) under section 16, to examine any information,
- may, if he reasonably considers it necessary or desirable for the proper and effective performance of those duties, call upon any person to assist him in carrying out that search, examination or entry.

20. Placing of locks and seals on premises, etc.

A member of the Customs and Excise Service or an authorized officer may, for the purposes of exercising the powers conferred on him by this Ordinance, place a lock or seal on any premises or place, or on any vessel, aircraft, vehicle or article.

PART 6

FORFEITURE

21. Seized articles liable to forfeiture, etc.

- (1) There shall be liable to forfeiture—
 - (a) any article which has been seized by a member of the Customs and Excise Service or an authorized officer in connection with an offence under this Ordinance, whether or not any person has been convicted of the offence;

- (b) any vessel or vehicle so seized which has been used in connection with, or is the subject of, an offence under this Ordinance, whether or not any person has been convicted of the offence; or
- (c) any article to which section 17(6) applies and which the Commissioner believes to be an article mentioned in paragraph (a) of the definition of “controlled article” in section 17(7).

(2) The Commissioner may, within 30 days of the seizure of an article, vessel or vehicle, restore any article (other than a chemical weapon) or any vessel or vehicle which is liable to forfeiture to the person who appears to him to be the owner thereof or the authorized agent of the owner; and upon such restoration the other provisions of this Part shall cease to apply to the article, vessel or vehicle.

(3) The Commissioner shall, not later than 30 days beginning on the date of the seizure of an article, vessel or vehicle, serve a notice of the seizure—

- (a) on a person who was to the knowledge of the Commissioner at the time of, or immediately after, seizure, an owner of the article, vessel or vehicle; and
- (b) specifying—
 - (i) the reasons for the seizure;
 - (ii) that the article, vessel or vehicle is liable to forfeiture if—
 - (A) in the case of the article, the ground stated in subsection (1)(a) is applicable to the article;
 - (B) in the case of the vessel or vehicle, the ground stated in subsection (1)(b) is applicable to the vessel or vehicle;
 - (iii) that if no notice of claim in respect of the article, vessel or vehicle is given to the Commissioner under subsection (7), then the article, vessel or vehicle will be forfeited to the Government under subsection (12); and
 - (iv) that the Commissioner is required by section 16(5) to restore the article, vessel or vehicle to the person who appears to him to be the owner thereof or the authorized agent of the owner as soon as is reasonably practicable after the article, vessel or vehicle—
 - (A) is not, or is no longer, required for the purposes of any investigation or criminal proceedings under this Ordinance or any other enactment; and
 - (B) is not liable to forfeiture under this Ordinance or any other enactment,

and the notice shall be accompanied by copies of section 16(5) and this section.

(4) Subsection (3) shall not apply in relation to an owner who does not have a permanent address in Hong Kong at the time of seizure.

(5) Where the Commissioner believes that the article, vessel or vehicle is a stolen article, vessel or vehicle, he shall serve notice of the seizure within the period specified in subsection (3), on a person whom he believed at the time of, or immediately after, seizure, to be an owner of the article, vessel or vehicle.

(6) Subject to subsection (13), a notice given under subsection (3) or (5) shall be deemed to have been duly served if—

- (a) it is delivered to the person on whom it is to be served;
- (b) it is sent by registered post addressed to such person at the place of residence or business of such person, if any, known to the Commissioner; or
- (c) where it cannot be served in accordance with paragraph (a) or (b), the notice is exhibited at the Customs and Excise Department, in a place to which the public have access, for a period of not less than 7 days commencing within 30 days from the date of the seizure of the article, vessel or vehicle.

(7) If an article, vessel or vehicle is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner of the article, vessel or vehicle or a person who was in possession of the article, vessel or vehicle at the time of seizure, or a person who has a legal or equitable interest in the article, vessel or vehicle, may within 30 days beginning, where notice under subsection (3) or (5) is—

- (a) served by delivery to the person to be served, on the date of service;
- (b) sent by registered post, on the third day after the date of posting; or
- (c) exhibited as described in subsection (6)(c), on the first day it is so exhibited,

give notice in writing to the Commissioner claiming that the article, vessel or vehicle is not liable to forfeiture and of his full name and address for service in Hong Kong.

(8) Where a claimant does not have a permanent address in Hong Kong, the notice to the Commissioner under subsection (7) shall nominate a solicitor qualified to practise under the Legal Practitioners Ordinance (Cap. 159), by including the name and address of the solicitor, who is authorized to accept service on his behalf in relation to any forfeiture proceedings.

(9) If a notice referred to in subsection (8) does not include the name and address of a solicitor as required under that subsection, it shall be regarded as if no notice had been given.

(10) Service of process in relation to forfeiture under this Ordinance at an address given under subsection (7) or on a solicitor nominated under subsection (8), shall be good service on the claimant.

(11) A claimant may withdraw a notice of a claim at any time in writing to the Commissioner.

(12) If, on the date of expiration of the appropriate period of time specified in subsection (7) for the giving of a notice of claim, under that subsection, no such notice has been given in writing to the Commissioner, then the article, vessel or vehicle—

- (a) shall be forfeited forthwith to the Government; and
- (b) may be disposed of, whether by destruction or otherwise, as the Commissioner thinks fit.

(13) Where—

- (a) an article is liable to forfeiture by virtue of subsection (1)(c); and
- (b) subsection (3) does not apply in the case of the article because the Commissioner does not know who is the owner of the article,

then the Commissioner shall, notwithstanding that subsection (3) does not apply, cause subsection (6)(c) to be complied with in respect of the article—

- (c) as if subsection (3) did apply; and
- (d) with such modifications to the notice concerned as are necessary to take account of that lack of knowledge,

and the other provisions of this section and Part shall apply accordingly.

(14) It is hereby declared that nothing in this section shall prevent the Commissioner from restoring any article (other than a chemical weapon), vehicle or vessel mentioned in subsection (2) to a person or agent mentioned in that subsection—

- (a) in response to a notice under subsection (7); and
- (b) on or after the expiration of the 30 days mentioned in subsection (2).

22. Determination of applications for forfeiture

(1) When a notice of claim is given under section 21(7) and the article, vessel or vehicle concerned has not been restored pursuant to section 21(2) or (14), the Commissioner or an authorized officer shall apply to a magistrate, the District Court or the Court of First Instance for the forfeiture of the article, vessel or vehicle and shall state in the application the name and address of the claimant or in the case of a claimant who does not have a permanent address in Hong Kong, the name and address of the solicitor authorized to accept service as specified in the notice of the claim.

(2) When an application under subsection (1) is made to a magistrate, the magistrate shall issue a summons to the claimant, requiring him to appear before a magistrate upon the hearing of the application, and shall cause a copy of such summons to be served upon the Commissioner.

(3) When an application under subsection (1) is made to the District Court or the Court of First Instance, it shall be made and proceeded with in accordance with rules of court, and may be begun by motion.

(4) Where the claimant is the defendant in criminal proceedings before a court and there is no other claimant, on an application made in that behalf by the Commissioner, the court may hear the forfeiture application immediately following the criminal proceedings and for the purposes of a hearing under this subsection, any requirement in respect of the issue or service of a summons or any notice of the hearing under or by virtue of subsection (2) or (3), as the case may be, shall not apply.

(5) If, upon the hearing of an application under subsection (1), the claimant or some other person who, though not the claimant, was, or would have been, entitled to make a claim under section 21(7), appears before a court, the court shall hear the application.

(6) A court may, at the hearing of a forfeiture application, or at an adjourned hearing, hear a person—

- (a) who has not been served with a notice of seizure and was not present when an article, vessel or vehicle was seized; or
- (b) whose identity was not known to the Commissioner at the time of, or immediately after, seizure; and
- (c) who appears to the court to have a right to claim ownership of, or a legal or equitable interest in, the article, vessel or vehicle, on his claim as to why the article, vessel or vehicle should not be forfeited.

(7) If, upon the hearing of an application under subsection (1), neither the claimant nor any other person who, though not the claimant, was, or would have been, entitled to make a claim under section 21(7), appears before a court and the court is satisfied—

- (a) that the summons or the notice of the hearing (if any) required to be served under or by virtue of subsection (2) or (3), as the case may be, was served;
- (b) that a person at the address for service, including a solicitor nominated to accept service on behalf of a claimant, has refused to accept service of the summons or the notice of the hearing referred to in paragraph (a); or
- (c) that the address for service given to the Commissioner is inadequate to effect service of the summons or the notice of the hearing referred to in paragraph (a),

the court shall hear and determine the application without requiring further inquiry as to the whereabouts of the claimant.

(8) Subject to the provisions of this Ordinance, an application under subsection (1) to a magistrate shall be deemed to be a complaint for the purposes of section 8 of the Magistrates Ordinance (Cap. 227).

(9) Upon the hearing of an application under subsection (1) a court shall order that the article, vessel or vehicle, as the case may be, be forfeited to the Government and disposed of, whether by destruction or otherwise, as the Commissioner thinks fit—

- (a) in the case where—
 - (i) the person who appears before the court fails to satisfy the court that he was, or would have been, entitled to make a claim under section 21(7) in respect of the seized article, vessel or vehicle;
 - (ii) no other person appears before the court and satisfies it that he was, or would have been, entitled to make such claim; and
 - (iii) the court is satisfied that the article, vessel or vehicle is liable to forfeiture; or
- (b) in the case where the court is satisfied that the article—
 - (i) is liable to forfeiture; and
 - (ii) is such an article as is a chemical weapon.

(10) Upon the hearing of the application under subsection (1), in any case other than a case referred to in subsection (9)(a) or (b) a court may, if it is satisfied—

- (a) that a person is, or would have been, entitled to make a claim under section 21(7) in respect of the seized article, vessel or vehicle; and
- (b) that the article (not being a chemical weapon), is liable to forfeiture,

order that the article, vessel or vehicle—

- (c) be forfeited to the Government;
- (d) be delivered to the claimant subject to any condition which it may specify in the order; or
- (e) be disposed of in such manner and subject to any such condition as it may specify in the order.

(11) Upon the hearing of the application a certified true copy of the record of the proceedings, including the decision of the court, in any proceedings in respect of an offence under this Ordinance shall be admissible in evidence.

(12) If, after a court has ordered that an article, vessel or vehicle be delivered to a person, that person cannot be found or refuses to accept the article, vessel or vehicle, the Commissioner may apply to a court which may—

- (a) order that the article, vessel or vehicle be forfeited; or
- (b) make any other order as it considers fit in the circumstances.

23. Power to release seized vessels and vehicles prior to hearing

(1) Where an application has been made under section 22(1) in respect of a vessel or vehicle which is liable to forfeiture, a court may, upon payment into court by way of security of a sum of money of such amount as the court thinks

fit in all the circumstances of the case, order that the vessel or vehicle be delivered to the claimant thereof upon the condition that the vessel or vehicle be re-delivered into the custody of the Commissioner before the date of hearing of the application.

(2) If—

(a) a court has ordered under subsection (1) that a seized vessel or vehicle be delivered to the claimant thereof; and

(b) the vessel or vehicle is not delivered into the custody of the Commissioner before the date of the hearing of the application, the court hearing the application may, in lieu of ordering under section 22(9) or (10) that the vessel or vehicle be forfeited to the Government, order that the money paid into court under subsection (1) be forfeited to the Government or returned to the person who paid it into court.

(3) A claimant who applies for the release of a vessel or vehicle shall prior to the release of the vessel or vehicle pay to the Commissioner the reasonable cost of assessing the value of the vessel or vehicle as the court orders.

24. Power to dispose, etc., of perishables, etc.

(1) If an article liable to forfeiture under section 21(1) is, in the opinion of the Commissioner, of a perishable nature or of such a nature that it is difficult to store or is likely to deteriorate before the conclusion of any proceedings relating to it, the Commissioner may—

(a) release the article to the owner or a person entitled to make a claim upon payment by way of security to the Commissioner of an amount of money of not less than the value of the seized article as assessed by the Commissioner or an authorized officer;

(b) for a perishable article, order that the article—

(i) be sold and the proceeds of the sale be retained by the Commissioner; or

(ii) be destroyed; or

(c) for an article that is difficult to store or an article that is likely to deteriorate before the conclusion of any proceedings relating to it, apply to a magistrate, the District Court or the Court of First Instance for an order that the article be sold and the proceeds of the sale be retained by the Commissioner.

(2) The court to which an application has been made under subsection (1)(c) shall not make an order under that subsection unless it is satisfied that—

(a) in the case where the application is made before the expiry of the period for making a claim under section 21(7), the persons referred to in section 21(3), (4) and (5) have been given notice of the application for an order to sell the article; or

(b) in case where the application is made after the expiry of the period referred to in paragraph (a), the persons who have given notice to the Commissioner have been given notice of the application for an order to sell the article.

(3) Where an application is made under section 22(1) with respect to an article which is liable to forfeiture under section 21(1), the court may, in lieu of ordering under section 22(9) or (10) that the article be forfeited to the Government or be delivered to the claimant, order that the money paid to the Commissioner as security under subsection (1)(a) or retained by the Commissioner under subsection (1)(b) or (c), be forfeited to the Government or paid to the person giving the security or the claimant.

(4) If an article liable to forfeiture under section 21(1) is, in the reasonable opinion of the Commissioner, a chemical weapon which poses an immediate threat to the health or safety of the public, the Commissioner may order that the article be destroyed or otherwise disposed of in such a manner that the article ceases to be such a threat.

25. Stay of order on appeal

(1) Subject to subsection (2), an order by a court for the delivery of an article, vessel or vehicle to a claimant shall be stayed if the Commissioner or the Secretary for Justice lodges an appeal against the order to deliver the article, vessel or vehicle or an application by way of case stated in relation to the order of the court until those proceedings are dealt with by the higher court.

(2) The Commissioner may, notwithstanding subsection (1), consent to the delivery of the article, vessel or vehicle.

PART 7

INTERNATIONAL INSPECTIONS

26. Inspections : Interpretation

For the purposes of this Part—

- (a) the verification annex is the annex on implementation and verification to the Convention;
- (b) a routine inspection is an inspection conducted pursuant to Parts II to IX of that annex;
- (c) a challenge inspection is an inspection conducted pursuant to Parts II and X of that annex;

- (d) an assistance inspection is an inspection conducted pursuant to Parts II and XI of that annex.

[*cf.* 1996 c. 6 s. 24 U.K.]

27. Rights of entry, etc., for purposes of inspection

(1) If it is proposed to conduct a routine inspection, a challenge inspection or an assistance inspection in Hong Kong—

- (a) the Commissioner may issue an authorization under this section in respect of that inspection (except such an authorization in relation to a challenge inspection or an assistance inspection to the extent that the area in which that inspection is to be conducted is domestic premises);
- (b) in the case of a challenge inspection or an assistance inspection to the extent that the area in which that inspection is to be conducted is domestic premises, a magistrate may issue an authorization under this section in respect of that inspection if the magistrate is satisfied, by information on oath, that it is reasonably necessary for the domestic premises to be subject to that inspection.

(2) An authorization under this section shall—

- (a) contain a description of the area (the specified area) in which the inspection is to be conducted;
- (b) specify the type of inspection concerned;
- (c) state the names of the members of the inspection team by whom the inspection is to be carried out; and
- (d) in the case of a challenge inspection, state the name of any observer who may accompany the team.

(3) An authorization under this section shall have the effect of authorizing the inspection team—

- (a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by the verification annex; and
- (b) to do such other things within that area in connection with the inspection as they are entitled to do by virtue of the verification annex (including things concerning the maintenance, replacement or adjustment of any instrument or other article).

(4) An authorization under this section shall in addition have the effect of—

- (a) authorizing one or more than one in-country escort to accompany the inspection team in accordance with the provisions of the verification annex; and

- (b) authorizing a member of the Customs and Excise Service or an authorized officer or any other public officer to give such assistance as the in-country escort may request for the purpose of facilitating the conduct of the inspection in accordance with the verification annex,

and the name of the person in charge of the in-country escort shall be stated in the authorization.

(5) An authorization under this section in the case of a challenge inspection shall in addition have the effect of authorizing the observer to exercise within the specified area such rights of access and entry as are conferred on him by the verification annex.

(6) Any member of the Customs and Excise Service or authorized officer or other public officer giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that subsection.

(7) The occupier of any premises or place—

- (a) in relation to which it is proposed to exercise a right of entry in reliance on an authorization under this section; or
- (b) on which an inspection is being carried out in reliance on such an authorization,

or a person acting on behalf of the occupier of any such premises or place, shall be entitled to require a copy of the authorization to be shown to him by a member of the in-country escort.

(8) The validity of any authorization purporting to be issued under this section in respect of any inspection shall not be called in question before any court at any time before the conclusion of that inspection.

(9) Accordingly, where an authorization purports to be issued under this section in respect of any inspection, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the inspection.

(10) If in any proceedings any question arises whether a person at any time was or was not, in relation to any routine, challenge or assistance inspection, a member of the inspection team or a member of the in-country escort or the observer, a certificate issued by or under the authority of the Commissioner stating any fact relating to that question shall be conclusive evidence of that fact.

(11) If an authorization is issued under this section the Commissioner or, in the case of an authorization issued under subsection (1)(b), a magistrate, may issue an amendment varying the specified area, and—

- (a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;

- (b) subsection (8) shall apply to the amendment as it applies to the authorization;
- (c) the Commissioner or magistrate, as the case may be, may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply accordingly.

[*cf. 1996 c. 6 s. 25 U.K.*]

PART 8

DISCLOSURE OF INFORMATION

28. Disclosure of information

- (1) This section applies to information if—
 - (a) it was obtained under, or in connection with anything done under, this Ordinance or the Convention; and
 - (b) it relates to a particular business or other activity carried on by any person.
- (2) So long as the business or activity continues to be carried on the information shall not be disclosed except—
 - (a) with the consent of the person for the time being carrying on the business or activity;
 - (b) in connection with anything done for the purposes of the Convention;
 - (c) in the performance of duties imposed by this Ordinance or in connection with anything done for the purposes of this Ordinance;
 - (d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (e) in connection with the enforcement of any restriction on imports or exports;
 - (f) in connection with anything done for the purposes of ensuring the security of Hong Kong;
 - (g) in dealing with an emergency involving danger to the public;
 - (h) to the International Court of Justice for the purpose of enabling that Court to deal with any dispute referred to it under the Convention; or
 - (i) that it is permitted by law.

[*cf. 1996 c. 6 s. 32(1) & (2) U.K.*]

PART 9

OFFENCES

29. Part 2 offences (Chemical weapons)

(1) A person who contravenes section 5 commits an offence and is liable on conviction on indictment to imprisonment for life.

(2) In proceedings for an offence under subsection (1), where section 5(a), (b), (c) or (d) is applicable to an article, it is a defence for the person charged with the offence to prove—

(a) that he neither knew nor suspected nor had reason to suspect that the article was a chemical weapon; or

(b) that he knew or suspected the article to be a chemical weapon and as soon as was practicable after he first so knew or suspected he took all reasonable steps to inform a member of the Customs and Excise Service or an authorized officer of his knowledge or suspicion.

(3) Nothing in subsection (2) prejudices any defence which it is open to a person charged with an offence under section 5 to raise apart from that subsection. [*cf.* 1996 c. 6 s. 2(6), (7) & (8) U.K.]

(4) A person who contravenes section 7(1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

30. Part 3 offences (Permits)

(1) A person who—

(a) is required under section 8(1)(a) to have a permit to operate a facility so far as concerns the production, acquisition, retention or use of Schedule 1 chemicals at that facility, or the transfer of Schedule 1 chemicals from that facility; and

(b) without, or otherwise than in accordance with, such a permit, intentionally or recklessly produces, acquires, retains or uses Schedule 1 chemicals at that facility, or transfers Schedule 1 chemicals from that facility,

commits an offence and is liable—

(c) on summary conviction to a fine of \$200,000 and to imprisonment for 2 years;

(d) on conviction on indictment to a fine of \$500,000 and to imprisonment for 5 years.

(2) A person who—

(a) is required under section 8(1)(b) to have a permit to operate a facility so far as concerns the production, processing or consumption of Schedule 2 chemicals at that facility; and

(b) without, or otherwise than in accordance with, such a permit, intentionally or recklessly produces, processes or consumes Schedule 2 chemicals at that facility,

commits an offence and is liable—

(c) on summary conviction to a fine at level 6 and to imprisonment for 1 year;

(d) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years.

(3) A person who—

(a) is required under section 8(1)(c) to have a permit to operate a facility so far as concerns the production of particular Schedule 3 chemicals at that facility; and

(b) without, or otherwise than in accordance with, such a permit, intentionally or recklessly produces that chemical at that facility,

commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year. [*cf. Chemical Weapons (Prohibition) Act 1994, s. 77(1), (2) & (3), Commonwealth of Australia*]

(4) A permit holder who, without reasonable excuse, contravenes a condition to which a permit is subject commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(5) Any person who—

(a) forges a permit;

(b) without the authority of the Director, makes any alteration to a permit; or

(c) knowingly utters or makes use of a permit that has been forged or, without the authority of the Director, altered,

commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.

31. Part 4 offences (Notifications and reports in respect of facilities)

(1) The operator of a facility who, without reasonable excuse, contravenes section 11(1)(a) or (b) or 12(2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(2) A person who, without reasonable excuse, fails to comply with a notice given by the Director under section 13(2) or (3) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

32. Part 5 offences (Powers of investigation)

(1) Subject to subsection (2), a person who contravenes section 17(1), (3), (4) or (5) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(2) Subsection (1) shall not apply to a prescribed person mentioned in paragraph (b) of the definition of “prescribed person” in section 17(7) whenever the prescribed person is acting in his capacity as a prescribed person.

(3) If a member of the Customs and Excise Service or an authorized officer has placed a lock or seal pursuant to section 20, then except as provided in subsection (4), any person who breaks or interferes with such a lock or seal commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.

(4) If—

(a) any person breaks or interferes with any such lock or seal in the belief in good faith that it is necessary immediately to break or interfere with the lock or seal in order to prevent—

(i) injury being suffered by any person; or

(ii) damage being incurred to any premises, vessel, aircraft, vehicle or article; or

(b) a public officer breaks or interferes with any such lock or seal in the exercise of his lawful duties,

such person or public officer shall be deemed not to have contravened subsection (3).

33. Part 7 offences (International inspections)

(1) If an authorization has been issued under section 27 in respect of any inspection, a person commits an offence if he—

(a) refuses without reasonable excuse to comply with any request made by a member of the Customs and Excise Service or an authorized officer or a member of the in-country escort for the purpose of facilitating the conduct of that inspection in accordance with the verification annex;

(b) interferes without reasonable excuse with any container, instrument or other article installed in the course of that inspection in accordance with the verification annex; or

(c) wilfully obstructs any member of the inspection team or of the in-country escort, or the observer, in the conduct of that inspection in accordance with the verification annex.

(2) Subsection (1)(b) applies to interference which occurs at any time while the container, instrument or other article is retained in accordance with the verification annex.

(3) A person who commits an offence under this section is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

[*cf. 1996 c. 6 s. 26 U.K.*]

34. Part 8 offence (Disclosure of information)

A person who discloses information in contravention of section 28 commits an offence and is liable—

- (a) on summary conviction to a fine at level 6;
- (b) on conviction on indictment to a fine of \$200,000 and to imprisonment for 2 years.

35. Obstruction

(1) Any person who—

- (a) wilfully obstructs a member of the Customs and Excise Service or an authorized officer in the exercise of any power or the performance of any duty conferred or imposed on members of the Customs and Excise Service or authorized officers by this Ordinance;
- (b) fails to comply with any requirement, direction or demand given or made by a member of the Customs and Excise Service or an authorized officer in the exercise or performance of any such power or duty,

commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) Any person who knowingly makes a false report, or furnishes any false or misleading information, to a member of the Customs and Excise Service or an authorized officer in performing his duties under this Ordinance commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

36. False or misleading statements, etc.

(1) Any person, who, in respect of—

- (a) an application for the grant of a permit; or
- (b) any document or other article (howsoever described) required under this Ordinance (including required under a permit or under the Convention) to be provided to the Commissioner, the Director, a member of the Customs and Excise Service, an authorized officer, or an inspection team,

makes or causes to be made any statement or furnishes or causes to be furnished any information which is false or misleading in a material particular or omits any material particular commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years, unless he satisfies the court that he did not know and had no reason to believe the statement or information to be false or misleading or the omission to be material.

(2) Any person who, without reasonable excuse, refuses or fails to provide a document or other article in accordance with a requirement referred to in subsection (1)(b) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 2 years.

37. Time limitation for criminal proceedings

In any case of an offence, other than an indictable offence, under this Ordinance, a complaint shall be made or an information laid in respect of the offence within 2 years or, in the case of an offence under section 35(2), 3 years from the time when the matter of the complaint or information, as the case may be, arose.

PART 10

MISCELLANEOUS

38. Appeals

(1) The holder of, or the applicant for, a permit to which a relevant decision applies may appeal in writing to the Chief Executive in Council—

(a) against the decision; and

(b) not later than 28 days after notice of the decision was served on the holder or the applicant, as the case may be.

(2) In subsection (1), “relevant decision” (有關決定) means a decision of the Director to which section 10(4) applies.

(3) The Chief Executive in Council shall determine an appeal under subsection (1) by confirming, varying or reversing the decision the subject of the appeal.

39. Power of Director to specify forms

(1) Subject to subsection (2), the Director may specify the form of any document required under this Ordinance to be in the specified form and the form of such other documents required for the purposes of this Ordinance as he thinks fit.

(2) The Director's power under subsection (1) shall be subject to any express requirement under this Ordinance for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Director, his exercise of that power in respect of that form does not contravene that requirement.

(3) The Director's power under subsection (1) may be exercised in such a way as to—

- (a) include in the specified form of any document referred to in that subsection a statutory declaration—
 - (i) to be made by the person completing the form; and
 - (ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;
 - (b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Director thinks fit.
- (4) A form specified under this section shall be—
- (a) completed in accordance with such directions and instructions as are specified in the form;
 - (b) accompanied by such documents as are specified in the form; and
 - (c) if the completed form is required to be provided to—
 - (i) the Director;
 - (ii) another person on behalf of the Director; or
 - (iii) any other person,so provided in the manner and within the period, if any, specified in the form.

40. Power to amend Schedules

(1) The Secretary for Commerce, Industry and Technology may by order amend Schedule 1, 2 or 3 in order to effect changes made to the Convention under Article XV of the Convention.

(2) The Financial Secretary may by order amend Schedule 4.

41. Service of notices

Subject to section 21(6) and (10), a notice (howsoever described) which is required to be served under this Ordinance, or which may be served under this Ordinance, on a person (howsoever described) shall, in the absence of evidence to the contrary, be deemed to be so served if—

- (a) in the case of an individual, it is—
 - (i) delivered to him;
 - (ii) left at his last known address for service, or at his last known place of residence or business, in Hong Kong;
 - (iii) sent by post to him at his last known address for service, or at his last known postal address, in Hong Kong; or
 - (iv) sent by telex, facsimile transmission or other similar method to him at his last known address for service, or at his last known postal address, or at his last known place of residence or business, in Hong Kong;
- (b) in the case of a company, it is—
 - (i) given to or served on an officer of the company;
 - (ii) left at the company's last known address for service, or at its last known place of business, in Hong Kong;
 - (iii) sent by post to the company at its last known address for service, or at its last known postal address, in Hong Kong; or
 - (iv) sent by telex, facsimile transmission or other similar method to the company at its last known address for service, or at its last known postal address, or at its last known place of business, in Hong Kong;
- (c) in the case of a partnership, it is—
 - (i) delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual; or
 - (ii) given, served, left or sent in accordance with paragraph (b) in respect of any partner which is a company;
- (d) in the case of a person ("attorney") holding a power of attorney under which the attorney is authorized to accept service in respect of another person, it is—
 - (i) delivered, left or sent in accordance with paragraph (a) where the attorney is an individual;
 - (ii) given, served, left or sent in accordance with paragraph (b) where the attorney is a company;
 - (iii) delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual where the attorney is a partnership; or
 - (iv) given, served, left or sent in accordance with paragraph (b) in respect of any partner which is a company where the attorney is a partnership.

42. Regulations

The Chief Executive in Council may make regulations prescribing matters—

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance,

and, in particular, making provision with respect to—

- (c) the making of reports to the Organization in compliance with Hong Kong's obligations under the Convention;
- (d) offences in respect of contraventions of the regulations including the imposition in respect of any such offence of a fine not exceeding level 6 and of imprisonment for a period not exceeding 2 years.

43. Transitional

(1) Where on the relevant day the operator of a facility requires a permit to operate the facility during the year in which that day falls, then the operator shall be deemed to be the holder of a permit to operate the facility during that year—

- (a) subject to paragraph (b), until the expiration of—
 - (i) 3 months immediately following that day; or
 - (ii) that year,whichever first occurs;
- (b) if an application is made under section 9—
 - (i) for a permit to operate the facility during that year; and
 - (ii) before whichever expiration referred to in paragraph (a) first occurs,until the determination under section 10 of the application.

(2) Where the relevant day falls after 30 September in a year, then the operator of a facility who requires a permit to operate the facility during the immediately following year shall be deemed to be the holder of a permit to operate the facility during that immediately following year—

- (a) subject to paragraph (b), until the expiration of 3 months immediately following that day;
- (b) if an application is made under section 9—
 - (i) for a permit to operate the facility during that immediately following year; and
 - (ii) before the expiration referred to in paragraph (a) occurs,until the determination under section 10 of the application.

(3) In this section, "relevant day" (有關日期) means the day on which section 8 commences.

44. Consequential amendments

The enactments specified in Schedule 5 are amended as set out in that Schedule.

SCHEDULE 1

[ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE
DEFINITION OF "SCHEDULE 1 CHEMICAL"

	CAS registry number
A. Toxic chemicals:	
(1) O-Alkyl (<C ₁₀ , incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107-44-8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96-64-0)
(2) O-Alkyl (<C ₁₀ , incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates	
e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77-81-6)
(3) O-Alkyl (H or <C ₁₀ , incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts	
e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782-69-9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625-76-5)
Mustard gas: Bis (2-chloroethyl) sulfide	(505-60-2)
Bis (2-chloroethylthio) methane	(63869-13-6)
Sesquimustard: 1,2-Bis (2-chloroethylthio) ethane	(3563-36-8)
1,3-Bis (2-chloroethylthio) -n-propane	(63905-10-2)
1,4-Bis (2-chloroethylthio) -n-butane	(142868-93-7)
1,5-Bis (2-chloroethylthio) -n-pentane	(142868-94-8)
Bis (2-chloroethylthiomethyl) ether	(63918-90-1)
O-Mustard: Bis (2-chloroethylthioethyl) ether	(63918-89-8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinylchloroarsine	(541-25-3)
Lewisite 2: Bis (2-chlorovinyl) chloroarsine	(40334-69-8)
Lewisite 3: Tris (2-chlorovinyl) arsine	(40334-70-1)

- (6) Nitrogen mustards:
 HN1: Bis (2-chloroethyl) ethylamine (538-07-8)
 HN2: Bis (2-chloroethyl) methylamine (51-75-2)
 HN3: Tris (2-chloroethyl) amine (555-77-1)
- (7) Saxitoxin (35523-89-8)
- (8) Ricin (9009-86-3)
- B. Precursors:
- (9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides
 e.g. DF: Methylphosphonyldifluoride (676-99-3)
- (10) O-Alkyl (H or C_{10}, incl. cycloalkyl) O-2-dialkyl
 (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl
 (Me, Et, n-Pr or i-Pr) phosphonites and
 corresponding alkylated or protonated salts
 e.g. QL: O-Ethyl O-2-diisopropylaminoethyl
 methylphosphonite (57856-11-8)
- (11) Chlorosarin: O-Isopropyl methylphosphonochloridate (1445-76-7)
- (12) Chlorosoman: O-Pinacolyl methylphosphonochloridate (7040-57-5)

SCHEDULE 2

[ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE
DEFINITION OF "SCHEDULE 2 CHEMICAL"

- CAS registry
number
- A. Toxic chemicals:
- (1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl]
 phosphorothiolate (78-53-5)
 and corresponding alkylated or protonated salts
- (2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl) -1-propene (382-21-8)
- (3) BZ: 3-Quinuclidinyl benzilate (*) (6581-06-2)
- B. Precursors:
- (4) Chemicals, except for those listed in Schedule 1,
 containing a phosphorus atom to which is bonded
 one methyl, ethyl or propyl (normal or iso) group
 but not further carbon atoms,
 e.g. Methylphosphonyl dichloride (676-97-1)
 Dimethyl methylphosphonate (756-79-6)
 Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (944-22-9)
- (5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides
- (6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl
 (Me, Et, n-Pr or i-Pr)-phosphoramidates
- (7) Arsenic trichloride (7784-34-1)

- | | |
|---|-------------|
| (8) 2,2-Diphenyl-2-hydroxyacetic acid | (76-93-7) |
| (9) Quinuclidin-3-ol | (1619-34-7) |
| (10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl -2-chlorides
and corresponding protonated salts | |
| (11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane -2-ols
and corresponding protonated salts | |
| Exemptions: N,N-Dimethylaminoethanol
and corresponding protonated salts | (108-01-0) |
| N,N-Diethylaminoethanol
and corresponding protonated salts | (100-37-8) |
| (12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane -2-thiols
and corresponding protonated salts | |
| (13) Thiodiglycol: Bis (2-hydroxyethyl)sulfide | (111-48-8) |
| (14) Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol | (464-07-3) |

SCHEDULE 3

[ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE
DEFINITION OF "SCHEDULE 3 CHEMICAL"

- | | CAS registry
number |
|---|------------------------|
| A. Toxic chemicals: | |
| (1) Phosgene: Carbonyl dichloride | (75-44-5) |
| (2) Cyanogen chloride | (506-77-4) |
| (3) Hydrogen cyanide | (74-90-8) |
| (4) Chloropicrin: Trichloronitromethane | (76-06-2) |
| B. Precursors: | |
| (5) Phosphorus oxychloride | (10025-87-3) |
| (6) Phosphorus trichloride | (7719-12-2) |
| (7) Phosphorus pentachloride | (10026-13-8) |
| (8) Trimethyl phosphite | (121-45-9) |
| (9) Triethyl phosphite | (122-52-1) |
| (10) Dimethyl phosphite | (868-85-9) |
| (11) Diethyl phosphite | (762-04-9) |
| (12) Sulfur monochloride | (10025-67-9) |
| (13) Sulfur dichloride | (10545-99-0) |
| (14) Thionyl chloride | (7719-09-7) |
| (15) Ethyldiethanolamine | (139-87-7) |
| (16) Methyldiethanolamine | (105-59-9) |
| (17) Triethanolamine | (102-71-6) |

SCHEDULE 4

[ss. 9 & 40]

FEE TO ACCOMPANY APPLICATION FOR PERMIT
UNDER SECTION 9 OF THIS ORDINANCE

\$495

SCHEDULE 5

[s. 44]

CONSEQUENTIAL AMENDMENTS

Customs and Excise Service Ordinance

1. **Ordinances referred to in sections 17 and 17A**

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding—
“Chemical Weapons (Convention) Ordinance (26 of 2003)”.

Organized and Serious Crimes Ordinance

2. **Offences relevant to definitions of “organized crime” and “specified offence”**

Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended by adding—

“19. Chemical Weapons
(Convention) Ordinance
(26 of 2003)
section 5

prohibition against using, developing or producing, acquiring, stockpiling, retaining, participating in the transfer of, engaging in military preparations, or in preparations of a military nature, intending to use, chemical weapons, or assisting, encouraging or inducing anyone to engage in any activity prohibited by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993”.

Weapons of Mass Destruction (Control of Provision of Services) Ordinance

3. **Interpretation**

Section 2(3) of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) is repealed and the following substituted—

“(3) In subsection (1), “chemical weapon” (化學武器) has the same meaning as in section 2(1) of the Chemical Weapons (Convention) Ordinance (26 of 2003).”.