

立法會
Legislative Council

LC Paper No. CB(2) 2405/00-01

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by the Administration)

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**Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2001**

**Minutes of meeting
held on Friday, 13 July 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon Cyd HO Sau-lan
Hon WONG Yung-kan
Hon Andrew CHENG Kar-foo
- Public Officers Attending** : Mr David LAU
Principal Assistant Secretary for the Environment and Food (A) 2
- Mr Kevin CHOI
Acting Assistant Director (Headquarters)
Food and Environmental Hygiene Department
- Mr Lawrence PENG
Senior Government Counsel
Department of Justice
- Mr W S YIP
Senior Assistant Law Officer
Department of Justice

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Irene MAN
Senior Assistant Secretary (2)9

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I. The Administration's response to issues raised at the meeting on 15 June 2001
(LC Paper Nos. CB(2) 2027/00-01(01) to (03))

The Chairman said that the meeting was postponed from 6 July 2001 because of a typhoon on that day.

2. The Chairman advised that the Judiciary Administrator had provided a response raising certain issues for consideration by the Bills Committee. The Judiciary Administrator had also sent apologies for not being able to attend the meeting of the Bills Committee.

3. Mr Tommy CHEUNG asked whether the Bills Committee should invite the Judiciary Administrator again to explain its position at a meeting of the Bills Committee.

4. Dr LO Wing-lok said that the Judiciary Administrator had explained its position in the letter provided to the Bills Committee. He considered that members should consider other proposals which could address members' concerns.

The proposed Appeal Board

5. Ms Audrey EU suggested that the Bills Committee could first discuss the Administration's proposal of establishing an Appeal Board before deciding whether to invite the Judiciary Administrator to a meeting of the Bills Committee.

6. Principal Assistant Secretary for the Environment and Food (A) 2 (PAS(EF)(A)2) explained the Administration's proposal -

- (a) The proposed Appeal Board would comprise a Chairman and a panel of not less than 15 persons who should not be public officers;
- (b) Among the panel, two to three persons would also be appointed as Deputy Chairmen;
- (c) The Chairman should be a retired magistrate;

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- (d) Suitable persons from different sectors would be appointed as Panel members, including doctors, professionals academics, District Council members and members of consumer groups;
- (e) An Appeal Board sitting should consist of the Chairman or a Deputy Chairman, and three persons selected in rotation from the panel of 15 persons;
- (f) The Appeal Board would hear and determine any appeal relating to the issue of closure order by DFEH under the proposed section 128C(1) and the decision of DFEH to refuse to rescind the closure order under the proposed section 128C(7); and
- (g) The Board might consider any material submitted in both oral and written forms.

7. Referring to the Administration's paper (LC Paper No. CB(2)2027/00-01(02)), Ms Audrey EU enquired about the difference in time for the Licensing Appeal Board (LAB) and the proposed Appeal Board to arrange a hearing, and whether the Administration's proposed mechanism was cost-effective and efficient.

8. PAS(EF)(A)2 advised that an appellant might only be required to complete a simple application form to lodge an appeal. Upon receipt of the application, the secretary to the Appeal Board would make arrangements for a hearing. PAS(EF)(A)2 further advised that an Appeal Board sitting could be arranged within 10 days. He said that the Board would not be required to operate on a full-time basis and the secretary to the Board could be deployed from Government and perform other duties as well. Such arrangement was common in Government and would not incur any cost to the appellant.

9. Ms Audrey EU welcomed the proposed inclusion of medical doctors and professionals to the Appeal Board. She asked whether the composition of the Appeal Board, the application form, the time limit for hearing and the availability of further appeal channel would be set out in the form of subsidiary legislation. She also asked whether honoraria would be paid to the Chairman and panel members. She further asked how the Administration could guarantee that a hearing could be conducted within 10 days given that panel members were appointed on a part-time, voluntary basis.

10. PAS(EF)(A)2 advised that the Bill would be amended to provide for the establishment of an appeal board while its operation might have to be set out in subsidiary legislation. He said that the Administration had not yet decided on the operation details such as payment of honoraria. As regards the availability of panel members, he said that with a pool of 15 panel members and that only two members were

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required for a sitting in addition to the Chairman or Deputy Chairman, he did not envisage much problem in arranging for an Appeal Board sitting.

11. Mr Tommy CHEUNG agreed that there were merits with the proposed appeals board mechanism in terms of cost and efficiency. However, the trade had expressed concern about the independence of the Appeal Board, since the members were to be appointed by the Administration. Nevertheless, the trade welcomed the proposal of appointing a retired magistrate as the Chairman of the Board. Moreover, he considered that representatives from the trade should also be included in the panel.

12. Mr Tommy CHEUNG further said that it often took a long time for the Liquor Licensing Board (LLB) to give the decision in writing. He hoped that the decision of the proposed Appeal Board could be available as soon as possible to facilitate the appellant to consider whether to lodge further appeals to the court.

13. Senior Assistant Law Officer of the Department of Justice (SALO) advised that the operation of the proposed Appeal Board would be governed by a set of Rules which would be subsidiary legislation. The Rules could also set out the time limit for holding a hearing.

14. On the concern about availability of the decision of LLB in writing, SALO said that he believed that Mr Tommy CHEUNG was referring to a special case dealt with by the Municipal Services Appeals Board (MSAB). He explained that in that particular case, other similar premises in Lan Kwai Fong were also involved and the judge had to conduct site visits and prepare a lot of documents. While the decision of Liquor Licensing Board (LLB) should normally be available within one week, the decision of MSAB on that particular case was released only after two months. He stressed that this was a complicated case which was also subject to a judicial review afterwards.

Admin 15. PAS(EF)(A)2 said that Mr CHEUNG's proposal of including representatives from the trade in the panel of the Appeal Board could be considered. As regards the arrangement for a hearing, he explained that a shorter lead time than that for LLB was possible, because FEHD would normally have prepared all necessary evidence and documents before issuing a closure order.

16. Mr Tommy CHEUNG requested that the Administration should provide a detailed information paper on the establishment of the Appeal Board, including its composition, time limit for conducting a hearing and releasing its decision in writing etc. He considered that the decision of the Appeal Board might even be released on the same day of the hearing so that the aggrieved could seek judicial review or remedies immediately. He added that the reasons for making a closure order under section 128C should also be made known to the operator concerned so that the operator could defend himself during the hearing. He requested that such requirement should be included in the subsidiary legislation.

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17. Dr LO Wing-lok expressed support for a speedy, low cost and simple appeals mechanism, as well as the proposal of appointing experts and trade representatives to the panel. He sought clarification whether a further appeal channel would still be available after a decision was made by the Appeal Board.

18. Responding to Mr Tommy CHEUNG, PAS(EF)(A)2 advised that the subsidiary legislation would provide for the general operation of the Appeal Board. As regards the composition of panel members, he advised that this might not need to be included in the subsidiary legislation. He added that the panel members selected for a hearing would be well briefed of their duties and the procedures. He further said that the decision of the Appeal Board would not be final, and the Administration would still allow further appeals from parties concerned.

19. The Chairman pointed out that some legislation also specified the composition of appeal boards. Mr Tommy CHEUNG agreed with the Chairman and requested that the Board composition be included in the legislation. He also suggested that an industry representative should be present at each hearing. Ms Audrey EU expressed concern that Mr CHEUNG's request might give rise to problems in fixing an early hearing given the limited number of trade representatives on the panel.

20. The Chairman sought members' views as to whether they supported the proposed Appeal Board in principle. Mr Tommy CHEUNG said that the trade had expressed some concern on the proposed Appeal Board. Personally, he would be prepared to accept the proposed direction provided that there would be a balanced panel and that the operation and composition of the Appeal Board would be specified in subsidiary legislation. He would further consult the trade and report to the Bills Committee at the next meeting.

21. Ms Audrey EU said that she had no strong views if the industry found the proposal acceptable. She welcomed the arrangement of appointing professionals to the Appeal Board although she personally preferred the court to deal with appeals. As regards the time required for arranging hearings, the proposed Appeal Board would appear to be more efficient than the court. However, she considered that the establishment of the Appeal Board would still incur additional expenses such as publication of reports, etc.

22. In concluding the discussion, The Chairman said that the Bills Committee was generally in support of the proposed Appeal Board, subject to a balanced composition of the panel and the provisions for the operation and time limit for conducting a hearing etc. be specified in the legislation. PAS(EF)(A)2 agreed to consider the suggestions and would provide details for further discussion.

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II. Clause-by-clause examination

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Sections 128(1A)

23. In reply to Ms Audrey EU, PAS(EF)(A)2 advised that the proposed CSA was made in response to the concern that a licensed food establishment should not be closed on the ground that it had not obtained the necessary permit to sell certain food such as sashimi. ALA4 confirmed that the proposed CSA could achieve the intended effect.

Section 128B(2)

24. Referring to the proposed section 128B(2), Ms Audrey EU said that the owner of the premises should be notified upon the issue of the closure order. SGC advised that such provision had been added in the proposed section 128C(2A) which applied to both licensed and unlicensed food establishments. Acting Assistant Director (Headquarters) of FEHD (AD(HQ)(Atg)) added that members raised this concern at a previous Bills Committee meeting when discussing the procedures to issue a closure order under section 128C. However, section 128B dealt with closure orders issued by the court. Ms Audrey EU considered that similar provisions requiring that owners should also be notified should be included in section 128B. PAS(EF)(A)2 undertook to examine the feasibility of adding the notification requirement in section 128B.

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Section 128B(8)

25. Mr Tommy CHEUNG expressed concern that the gas, water and electricity supplies would be disconnected upon the issue of a closure order, irrespective of whether the premises were used for human habitation. He said that sometimes the residents might be away from Hong Kong and might not know about the closure order. Ms Audrey EU shared similar concern and asked whether the Administration would consider retaining the utility supplies if the premises were used for human habitation. She said that the closure order made under section 128B was only to prohibit the operation of unlicensed food business rather than human habitation.

26. PAS(EF)(A)2 agreed to consider members' request. He said that it was necessary to retain the discretion of the Authority to disconnect utility supplies where necessary. He also raised questions about the consequences should the illegal food business continue on the premises after the issue of a closure order. SALO advised that an operator of unlicensed food premises would usually disappear upon the issue of a closure order. However, if the operator continued the illegal food business on premises which were subject to a closure order, he would be subject to severe penalty in accordance with the relevant provisions in Cap. 132.

27. Ms Audrey EU asked whether the Administration would also amend section 128(1A) in Cap.132 to allow habitation on the closed premises, in line with the CSAs proposed for new section 128B(10)(a). PAS(EF)(A)2 responded that he would need to consider the implications of Ms EU's suggestion.

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Entering closed premises

28. Ms Audrey EU noted from Form H in clause 6 of the Bill that if someone entered a closed food premises, he might be liable to a fine of \$1,750 per day of stay and imprisonment of 12 months; and if someone removed or defaced the closure order, he would be liable to a penalty of \$1,750 and imprisonment for six months. She asked whether the penalties were too heavy, and whether these applied to re-entering a closed premises to do food business.

29. SALO advised that any person entering a closed food premises would commit an offence under section 128B(9), while breaking the lock or seal of the premises was an offence under section 128B(11)(b). He said that a person should apply for permission under section 128B(10) or 128C(13) as appropriate, to re-enter premises which was subject to a closure order.

30. Ms Audrey EU sought clarification on the purpose of the provisions for putting the premises under lock and seal, and whether this was practicable if the premises were still used for human habitation.

31. SALO explained that the closure order normally lasted for a short period. Based on past experience, the operator would surrender the premises once a closure order was made, and the owner would apply to rescind the order for repossession of the premises in about one week.

32. PAS(EF)(A)2 explained that putting a closed premises under lock and seal was to prevent a person from continuing to operate unlicensed food business on a closed premise. Otherwise, the Authority would have to deploy manpower to inspect the premises frequently to ensure that the closure order was complied with. He said that if the premises were used for human habitation, the residents of the premises would be allowed to enter the premises which would not be entirely locked in these cases.

33. Mr Tommy CHEUNG was of the view that imprisonment terms were too severe for entering a closed premises without permission. He asked about the number of cases where people were punished for breaking the lock/seal to re-enter closed premises under section 128 in the past two years. He also expressed concern that the owner might wish to enter the closed premises to ensure the safety of gas/electricity supplies, or the operator might want to remove any hazard. He considered that the Bill should state clearly that measures to enforce a closure order were only to prohibit the continuation of food business on the premises concerned.

34. PAS(EF)(A)2 advised that there were provisions in the Bill for the operator or the owner to apply for permission to re-enter a closed licensed premises to remove the hazard or to carry out rectifications. As for the unlicensed food premises, putting them under

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lock and seal would be the most effective and direct means to prevent continuous operation of illegal food business given the Administration's limited resources. He reiterated that anyone who had reasonable grounds could apply for permission to re-enter a closed premise.

35. The Chairman asked how the owner applied to lift the closure order if the operator disappeared upon the making of a closure order. SALO advised that the owner should apply to court for a re-possession order. Upon receipt of the application for a repossession order, the magistrate would normally allow the bailiff or the owner to enter the closed premises on a temporary basis.

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36. Mr Tommy CHEUNG expressed concern about the time required for the court to issue the re-possession order. The Chairman requested the Administration to provide the information after the meeting.

37. Ms Audrey EU asked whether the Authority would ensure that the premises were safe before putting lock and seal to the premises. SALO advised that section 128C(15) provided that the Authority might dispose of or remove or make arrangements for articles or things inside the closed premises, while section 128C(13)(a) provided for the situations where re-entry to the closed premises would be permitted.

38. Ms Audrey EU and Mr Tommy CHEUNG considered the penalty for breaking into a closed premise too heavy. The Chairman asked if the Administration would consider different penalties for breaking the lock/seal of closed premises, and for continued operation of food business on premises subject to a closure order. PAS(EF)(A)2 advised that the proposed penalty was the maximum penalty for those who deliberately ignored the closure order and break the lock/seal to enter the closed premises without permission. It was for the court to decide the penalty having regard to all relevant circumstances. SGC supplemented that a person who deliberately ignored a closure order and re-enter a closed premise without permission was a serious offence and the proposed penalty was appropriate. He added that the penalty was for entering or remaining on closed premises irrespective of the nature of activities carried on at the premises.

39. Ms Audrey EU referred to section 128C(19) and asked whether "the person having the management or control of any premises" meant the operator or the owner of the food premises. She was concerned that the owner might have to bear certain costs of which he was totally unaware. Ms EU also asked whether the definition of "civil debt" and "expenses" included the costs for locking the premises and disconnecting all supplies under section 128C(11). SGC advised that since the phrase was qualified by "immediately before the closure order in respect of the premises came into force", it referred to the operator of the food premises if the operator was a tenant of the premises at the time, and that section 128C(19)(a)-(c) set out those cost that was recoverable.

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40. Ms Audrey EU enquired about the amount charged to the operator or tenant of the closed premises in the past, and whether the owner would be liable if the operator did not pay such expenses. SALO advised that the premises would usually be closed for several days and the order would then be rescinded. There was no precedent on charging the owner or tenant for costs.

41. Mr Tommy CHEUNG asked whether section 128C(19) could specify that the owner would not be held responsible for the costs which should be borne by the operator/tenant concerned. SALO advised that legally speaking, if the owner was not in possession of the premises and had no knowledge of the business carried out on it, he would not be held responsible for any liability arising from the closure order. SGC supplemented that only the person in control of the premises immediately before the operation of the closure order would be held responsible. If the premise was occupied by a tenant, he would be the one responsible for the civil debt.

Forms H, I and J

Admin 42. Ms Audrey EU reminded the Administration to include in Form I the time limit for lodging an appeal in accordance with changes made to the appeal mechanism.

43. Ms EU commented that the contents of the Forms listed in clause 6 of the Bill should be in line with those in the Bill or existing provisions in Cap.132. In this connection, she asked why Form I used the expression of "I now have reasonable cause to believe" while Form J still used "now on proof to my satisfaction". SGC explained that the expressions in Forms I and J were consistent with those used in section 128C(1) and section 128C(6) respectively.

44. Ms EU further asked whether Form J and Form H should use similar expressions since both Forms were concerned with the power of Director of Food and Environmental Hygiene (DFEH). SGC explained that Form J would be issued when the Authority was satisfied that a closure order could be rescinded in accordance with section 128C(6), after receiving an application made under section 128C(5). He considered the expressions in both Forms appropriate. In reply to Ms Audrey EU, SGC advised that paragraphs (a) and (b) in Form J would cover the situations under section 128C(6)(a) and (b) respectively.

45. In response to Ms Audrey EU's further enquiry, PAS(EF)(A)2 said that an amendment would be made to Form H regarding notifying the owner of the premises of the making of a closure order.

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II. Any other business

46. Members agreed that the next meeting would be held on Monday, 17 September 2001 at 2:30 p.m. There being no other business, the meeting ended at 6:25 p.m.

Council Business Division 2
Legislative Council Secretariat
19 December 2001