

**立法會**  
***Legislative Council***

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the Administration)

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

**Minutes of meeting  
held on Tuesday, 27 March 2001 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members Present** : Hon Fred LI Wah-ming, JP (Chairman)  
Hon WONG Yung-kan  
Hon Andrew CHENG Kar-foo  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Dr Hon LO Wing-lok  
Hon Audrey EU Yuet-mee, SC, JP

**Members Absent** : Hon Cyd HO Sau-lan  
Hon WONG Sing-chi

**Public Officers Attending** : Mr Paul TANG  
Deputy Secretary for the Environment and Food (A)

Mrs Stella HUNG  
Deputy Secretary for the Environment and Food (A) (Des)

Miss Eva TO  
Principal Assistant Secretary for the Environment and Food  
(A) 3

Miss Sarah WU  
Deputy Director of Food and Environmental Hygiene  
(Environmental Hygiene)

Mr W H CHEUK  
Assistant Director (Headquarters)  
Food and Environmental Hygiene Department

Mr Lawrence PENG  
Senior Assistant Law Draftsman  
Department of Justice

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

**Staff in Attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Ms Joanne MAK  
Senior Assistant Secretary (2)2

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**I. Election of Chairman**

Mr Fred LI was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

(LegCo Brief issued by the Environment and Food Bureau [File Ref : EFB(CR)10/8/7])

2. Deputy Secretary for the Environment and Food (A) (DS(EF)(A)) briefed members on the salient points of the Bill. He said that the Bill sought to empower the Director of Food and Environmental Hygiene (DFEH) to apply to the court direct for a closure order in respect of unlicensed food premises. Under the present closure process, the Food and Environmental Hygiene Department (FEHD) had to first prosecute the operator of an unlicensed food establishment by summons and secure a conviction before applying to the court for a Prohibition Order. FEHD could apply for a closure order only if the Prohibition Order had been breached and the operator convicted. He said that the whole process could take as long as nine months.

3. DS(EF)(A) said that the Bill also sought to empower DFEH to close food establishments without recourse to court proceedings, on the ground of an immediate health hazard relating to food safety. He added that currently only the Director of Health had similar powers to close any premises, including food

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establishments, under the Prevention of the Spread of Infectious Diseases Regulation, to prevent the spread of infectious diseases.

Improving licensing service for the food trade

4. The Chairman said that the Panel on Food Safety and Environmental Hygiene had discussed the legislative proposal on 8 January 2001, and had raised some questions on the proposal.

5. Referring to the minutes of the Panel meeting on 8 January 2001, Mr Andrew CHENG said that the Administration should address the trade's concern that some operators might be forced to operate without a licence because it took a long time to get one. He said that he had come across a complaint case in which it had taken six to seven months to issue a licence for a bakery after the operator had submitted all the required certificates. Referring to the Administration's paper for the Panel meeting on 8 January 2001 (LC Paper No. CB(2) 628/00-01(01)), Mr CHENG noted that the Administration was now able to issue a full licence in four to six months after implementing measures to shorten the process for restaurant licensing. However, he considered that the Administration should explore ways to simplify the licensing procedures to further shorten the time required to issue a full licence.

6. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) acknowledged the need to shorten the licensing process for restaurants and other food business premises. She said that FEHD had introduced improvement measures to shorten the restaurant licensing process since June 2000. Better coordination had been established with Buildings Department (BD) and Fire Services Department (FSD) to provide a quicker and simplified licensing service. She said that since the establishment of Provisional Food Business Licences Issue Office in January 2001, applicants who had complied with all the basic licensing requirements could obtain a provisional licence over the counter within one working day, after submitting all necessary certificates and payment of licence fee. Moreover, about 72% of new applications were able to obtain a Provisional Licence within three months, and 30% to 40% of new applications got a Provisional Licence in one to two months. As for the issue of a Full Licence, DD(EH) said that recently an applicant had been able to obtain a Full Licence only in three months. She said that whilst improvement would continue to be made to the restaurant licensing process, the Administration was confident that the existing mechanism had already facilitated applicants in obtaining a restaurant licence.

7. DD(EH) further said that the Administration had commissioned a consultancy study to explore ways to simplify the licensing procedures for other types of food establishments, such as fresh provision shops, food factories, and

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"siu mei" and "lo mei" shops. The study would be completed shortly and its recommendations would be provided to the trade for consultation. She said that the licensing process for these establishments had actually been shortened in recent months. It was hoped that the new improvement measures proposed by the consultancy study would be implemented in mid 2001.

8. Mr Andrew CHENG considered that the Administration should further seek to shorten the time required to issue a Full Licence. He said that compared to the proposal for shortening the time of closing an unlicensed food establishment, which would be greatly reduced from nine months to only six weeks, the current improvements made to the licensing process were inadequate as it still took at least three months to issue a Full Licence. He requested FEHD to coordinate with BD and FSD to further enhance the overall efficiency in the licensing process.

9. DD(EH) said that FEHD had already assumed the coordinating role and provided one-stop service in respect of licensing matters. FEHD had managed to shorten the time for issuing the letter of requirements for Provisional Licence from 26 to 20 working days. She said that applicants could now obtain assistance and licensing-related information at the Provisional Food Business Licences Issue Office opened recently.

10. On the current legislative proposal, DS(EF)(A) explained that in the case of closing an unlicensed food establishment, DFEH would still have to apply to the court for the issue of a closure order. Therefore, it would be necessary for DFEH to provide sufficient evidence to the court in making the application.

11. Mr Andrew CHENG remained of the view that it still took long to issue a Full Licence in four to six months. He believed that there should be room for improvement. The Chairman requested the Administration to provide information on the average length of time required for granting a Provisional Licence and Full Licence in respect of restaurant and other food business licences over the past year.

12. Referring to Annex B of the Administration's paper (LC Paper No. (CB(2)628/00-01(01)), Mr WONG Yung-kan noted that there were 3,942 prosecutions for operators carrying on a food business without a licence or permit from January to September 2001. He considered that this was attributed to the slow licensing process. He asked if it was due to a lack of coordination amongst the departments involved that had delayed the licensing process.

13. DD(EH) reiterated that FEHD and departments concerned would continue to liaise with the trade to explore ways to further improve the licensing process and to address problems generally encountered by applicants. However, she

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pointed out that applicants also had their part to play and it was essential for them to comply with the requisite requirements relating to fire and building safety. She invited members to note that FEHD was now able to issue a Provisional Licence in about five weeks only and the licence was valid for six months. She stressed that food premises with a valid Provisional Licence were not regarded as unlicensed food premises.

14. Mr WONG Yung-kan asked if there were cases that food establishments were not granted Full Licences after they had obtained Provisional Licences. DD(EH) replied that there were such cases as some operators were satisfied with being able to make money just for a few months rather than to invest extra money to upgrade their facilities to meet the licensing requirements.

15. Mr Tommy CHEUNG said that the trade was concerned that the shortened process for the issue of a closure order might be abused. He cited a case whereby a large fast-food shop could not get a Provisional Licence because BD could not find the layout plan of the shop. He said that in this case, the operator should not be held responsible for the failure to obtain a licence. DS(EF)(A) clarified that under the present proposal, DFEH would still have to apply to the court for a closure order to close an unlicensed food establishment. It would be necessary for DFEH to provide full justifications to the court in making the application.

Closure of premises posing immediate health hazard

16. Mr Michael MAK requested the Administration to explain the circumstances referred to in the definition of "immediate health hazard" and the qualifications of the medical officer who would be responsible for confirming the health hazard by investigation or testing.

17. Assistant Director (Headquarters) (AD(HQ)) of FEHD said that the circumstances referred to in the definition of "immediate health hazard" were spelt out under the new section 128A(3). As to the qualification of medical officers mentioned in the Bill, AD(HQ) said that they were government doctors seconded to FEHD, who had background in epidemiology and public health.

18. Mr Tommy CHEUNG said that the food trade was worried that the proposed power to be conferred on DFEH to close premises was too wide. Referring to sub-paragraphs 11(a) to (d) of the Administration's paper (LC Paper No. CB(2) 628/00-01(01)), Mr CHEUNG said that he would not accept that a closure order should be issued to a food establishment just for the reason that the food it supplied was "suspected" to have been contaminated or deteriorated.

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19. Principal Assistant Secretary for the Environment and Food (A) 3 (PAS(EF)(A)3) pointed out that the wording of "immediate health hazard" had been refined under the new section 128A(3) to address the concerns raised by Panel members at the meeting on 8 January 2001. She said that for the four kinds of circumstances referred to in the definition, it was now specified that immediate closure of a food premise was called for only when the food supplied therein "was contaminated or tainted". She said that the Administration would examine the conditions of each case and would only issue a closure order based on the results of laboratory tests, professional advice and/or circumstantial evidence. She added that DFEH should exercise the power personally for the protection of food safety and public health on the advice of a medical officer, and the power would not be delegated. She added that the closure order would be lifted when DFEH was satisfied that the health hazard on the premises had been eliminated.

20. Ms Audrey EU asked what other circumstances also fell within the definition of "immediate health hazard" apart from those listed under section 128A(3)(a) - (d). PAS(EF)(A)3 responded that the circumstances set out therein were not exhaustive, and the Bill only described four main kinds of circumstances which fell within the definition of "immediate health hazard" based on past experience. As there might still be other circumstances which fell within the definition of "immediate health hazard", the word "include" was used in section 128A(3). She added that the Administration was preparing guidelines on those other circumstances to facilitate assessments to be carried out by the medical officer, and enforcement.

21. Mr Tommy CHEUNG asked whether the new section 128C, if enacted, would replace sections 19 and 24 of the Prevention of the Spread of Infectious Diseases Regulation (the Regulation) under which the Director of Health was empowered to isolate and disinfect any premises including food establishments to prevent the spread of infectious diseases. He was concerned that there might be an overlapping of powers. DS(EF)(A) explained that sections 19 and 24 of the Regulation dealt with infectious diseases while the new section 128C dealt with food hygiene incidents caused by factors other than infectious diseases. The new section 128C in the Bill was targetted at food premises where the hygiene conditions had deteriorated to such extent that it posed serious or immediate threat to public health and safety, calling for immediate closure of such premises.

Execution of a closure order and removal of paraphernalia

22. Ms Audrey EU asked why the closure order made under section 128B(1) or 128C(1) disallowed habitation by "a servant, watchman or caretaker" on the premises concerned. PAS(EF)(A)3 explained that "servant, watchman or caretaker" in the present context was regarded as an employee working on the

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premises concerned. The premises should not be taken as these people's places of residence and therefore these people should not be allowed to remain on closed premises. PAS(EF)(A)3 added that the Public Health and Municipal Services Ordinance (Cap. 132) also contained a similar provision. DS(EF)(A) pointed out that it was necessary to disallow habitation by servants or watchmen on the premises concerned to prevent them from carrying out illegal food business activities on the premises again. He assured members that a closure order would not operate to prevent human habitation on the premises concerned, or cause obstruction to public passage or fire escape, as the Basic Law stipulated that "the freedom of the person of Hong Kong residents shall be inviolable".

23. The Chairman asked whether the enforcement staff would also remove the paraphernalia found on the illegal food premises, PAS(EF)(A)3 explained that when a closure order in respect of any premises came into force, the authority might dispose of any perishable food found or food prepared/handled/supplied on the premises which was unfit for human consumption. It might also remove any article, thing or food found on the closed premises that was needed for carrying out food business activities on the premises. The authority was required to affix a notice at a conspicuous place on the closed premises setting out the details of the things removed and those which owners could claim for the return of things within seven days. PAS(EF)(A)3 added that these procedures were the same as those currently provided under Cap. 132.

24. Mr Tommy CHEUNG asked whether the food so removed by the authority upon closure of a premise would be tested to see if it was really contaminated. He was worried that if all the food would be destroyed after confiscation, the operator concerned would have great difficulty to appeal in the absence of evidence. He suggested that the results of the laboratory tests conducted by the Administration should be made available to the operator concerned upon request. He also suggested that the operator of the closed premise should be allowed, if he wished, to commission private laboratories to conduct tests for the food found on his premises.

25. PAS(EF)(A)3 assured members that laboratory tests would be conducted for food removed from premises which were subject to a closure order. As regards the exercise of power under the new section 128C, DFEH would order closure of a food premises after laboratory tests had been conducted for food collected from alleged unhygienic premises and the results of which had confirmed that the premises posed an immediate health hazard. However, for serious cases involving premises of extremely poor hygiene conditions, closure might be ordered based on circumstantial evidence.

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Adm 26. PAS(EF)(A)3 added that consideration would be given to including in the enforcement guidelines the procedures for removing food and paraphernalia found on any closed premises. She assured members that all evidence including laboratory tests would be retained until the case was concluded.

Compensation and remedies for wrongful closure

27. Mr Tommy CHEUNG and Ms Audrey EU asked whether the Administration would consider compensating the parties concerned for their losses caused by wrongful closure of their premises. PAS(EF)(A)3 said that as the power to close premises would be exercised very carefully by DFEH, she believed that the chance for wrongful closure was slim. If any person considered that the enforcement actions taken against his/her premises had caused him/her damages, that person could seek compensation by civil proceedings.

28. Ms Audrey EU sought clarification whether one should seek judicial review of the closure order before a civil claim could be made for the damage caused by the execution of such order. She asked whether the Bill could also provide for a procedure whereby the parties concerned could seek compensation from the authority on damages done to any closed premises.

29. Assistant Legal Advise 4 (ALA4) said that the Bill had not imposed restrictions on an aggrieved person's right to seek compensation under existing law. Any person aggrieved by a closure order might appeal to court to seek legal remedy. He pointed out that under the new section 128C(21), the court might confirm, suspend or disallow the order but no other legal remedy provisions were included under this section.

30. PAS(EF)(A)3 said that the legal advice given to the Administration was that compensation should be pursued through civil proceedings which were often dealt with by the District Court rather than the Magistrate's Court. She said that the principal ordinance (Cap. 132) had not provided for a compensation procedure, and remedies sought under the Ordinance were pursued by civil claims. She said that an aggrieved party could make a civil claim for remedy for any damage done to him/her due to negligence or fault committed by a public officer in the execution of a closure order against his/her premises. The Administration was therefore of the view that it was not appropriate to add provisions in the Bill to provide for compensation which should be dealt with by civil proceedings. In reply to Ms Audrey EU, PAS(EF)(A)3 said that the term "court" in the Bill referred to the Magistrate's Court.



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Appeal against DFEH's decision to close a food establishment

31. Mr Andrew CHENG noted that under the existing system, an aggrieved party could appeal to the Licensing Appeals Board in 28 days but under the new section 128C in the Bill, an aggrieved person could appeal to the court against DFEH's order within seven days. Mr CHENG considered that the short time allowed for appeals under the Bill would create undue pressure on and was unfair to an appellant who needed time to find a lawyer and prepare for documents and evidence. Moreover, it was also expensive for an appeal to be lodged to the court. He said that Mr Albert HO had expressed similar concern during the Panel meeting on 8 January 2001. Mr CHENG suggested that appeals should be handled by the Licensing Appeals Board instead. He suggested that, if necessary, the Administration could allow less than 28 days for appeals concerning closure orders to be made to the Board. Mr CHENG also suggested the Administration to review whether or not the chairman of the Licensing Appeals Board should be a judge.

32. DS(EF)(A) explained that in the case of closing an unlicensed food establishment, DFEG would still have to apply to the court for approval to issue a closure order. The time required for a closure order to be issued in these cases would be about two months. The seven days requirement under the new section 128C was proposed in view of the trade's concern that they would like to make an appeal as soon as possible if they were aggrieved by DFEH's decision to close their premises. He said that if appeals were to be handled by the Licensing Appeals Board, it would definitely take a longer time.

33. DS(EF)(A) further pointed out that under the new section 128C(7), the court could extend the period of time allowed for an applicant to appeal to the court against DFEH's decision. On the other hand, there were statutory provisions for arrangement of hearings by the Licensing Appeals Board and the process would take a longer time. He added that based on past experience, the Magistrate's Court could arrange early hearings and the time taken was much shorter than those handled by the Licensing Appeals Board.

34. In response to Mr Andrew CHENG's enquiry, PAS(EF)(A)3 explained that the lodging of an appeal did not operate as a stay of execution of a closure order imposed on a premises unless the court ordered otherwise. She said that the Magistrate's Court was experienced in dealing with cases concerning premises in contravention of the Food Business Regulation (Cap. 132) and the Administration was confident that the Magistrate's Court could expeditiously handle appeal cases relating to closure of food premises.

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35. Ms Audrey EU asked why it was specified under sections 128C(10) and (23) that the magistrate court's decision was final, since any appeal does not affect the validity of the closure order. PAS(EF)(A)3 said that a person's right of appeal was already protected under section 128C(7), which provided that any person having an interest in any premises in respect of which a closure order had been made could appeal to the court against the closure order. She explained that it was in the interest of both the aggrieved party and the authority to prevent appeals being dragged on. She further said that the closure order would be lifted if the immediate health hazard was removed. Therefore, it would be of more use for the aggrieved party to remove the health hazard immediately rather than to spend money on further appeals.

36. However, Mr Tommy CHEUNG considered that in some cases an aggrieved person would want to pursue further appeals if he felt that the closure order imposed on his premises was totally unjustified. He said that the Bill should not deprive the operator of his/her right to seek further appeals.

37. DS(EF)(A) pointed out that an aggrieved person could make a civil claim for remedy for any damages (monetary or other damages) caused to him by wrongful closure. He stressed that the one-tier appeal system was proposed having regard to the practical circumstances. He pointed out that the Magistrate's Court could order to rescind the closure order if it was of the view that the closure was unjustified.

38. Mr Tommy CHEUNG disagreed that it always took a short time for an aggrieved party to eliminate the immediate health hazard. He pointed out that in some cases, the owner of the premises concerned might not be able to do anything to eliminate the immediate health hazard such as in the case of contamination of the water source. PAS(EF)(A)3 said that if the water used in the premises had been contaminated, the premises could not be re-opened for food business. She added that the closure order would specify the reasons for the closure and the necessary rectification required. DS(EF)(A) supplemented that premises without tap water supply would not be able to obtain a food business licence from the outset. However, if the water supply was only temporarily discontinued, he believed that the problem could be resolved by undertaking the necessary rectification work.

39. Mr Tommy CHEUNG maintained the view that the trade should be allowed to pursue further appeals if they so wished, and he saw no reason why their right in this regard should be denied. DS(EF)(A) undertook to seek legal advice and provide a written response.

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Current situation

40. In response to the Chairman's enquiry, DD/(EH) said that the Administration estimated that there were currently 700 to 800 unlicensed food establishments; about 500 of them were in the process of applying for a licence and the remainder had not made any applications for a licence. She said that the unlicensed food establishments were discovered through health inspections or investigations of complaints. She pointed out that the new section 128B was targetted at those unlicensed food establishments which had not made any effort to apply for a licence.

41. Referring to paragraph 6 of the LegCo Brief on the Bill, the Chairman sought clarification as to why FEHD only succeeded in applying for one closure order out of 558 Prohibition Orders in 2000, whereas there were 200 to 300 unlicensed food establishments which had made no application for a licence. DD(EH) explained that the number of 558 Prohibition Orders was the accumulated total, including food establishments which had subsequently ceased to operate as food establishments but had not applied to rescind the Order.

42. DS(EF)(A) supplemented that the new policy did not target at restaurants because they involved substantial investment, and the operators often made every effort to apply for a restaurant licence. He pointed out that the new section 128B targetted at illegal food premises such as illegal meat roasting factories which did not need any refurbishment and could easily come into operation.

Cracking down illegal meat roasting factories

43. Mr Andrew CHENG said that since illegal meat roasting factories could easily move to another site to continue their operation, he doubted if the Administration could effectively crack down these factories under the new policy of expediting the closure process. DS(EF)(A) said that under the existing system, a Prohibition Order was not effective to deal with these illegal establishments, since the Order did not impose closure on the premises concerned nor empower the authority to remove the food and cooking equipment/utensils found on the premises. However, if a closure order was imposed, the operator would have to find another site and incur higher costs if he wished to set up the illegal business again. DS(EF)(A) further said that under the current procedure, the Administration must prove that the Prohibition Order had been breached before it could apply to the court for a closure order. However, under the current proposal, DFEH could apply to the court for a closure order to close any illegal food establishments if their operation was unlicensed.

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44. DD(EH) added that to expedite the closure process, the new section 128C, instead of section 128B, would be invoked to close illegal meat roasting factories if the hygiene conditions of these premises were so poor as to pose immediate hazard to public health. She explained that the new section 128B (which would involve a longer closure process) would be invoked to close food premises, where the hygiene conditions were not so poor, but could not meet the licensing requirements due to structural constraints.

Provision of information to owners of premises concerned

Adm 45. Mr Tommy CHEUNG asked whether the owner of a premise closed under section 128B would be informed of the reasons of the closure, for example, the structural constraints of the premise had rendered it unlicensable. He was worried that without such information, the owner might continue to lease the premises to people for operating food business. PAS(EF)(A)3 agreed to provide a response.

Adm 46. The Chairman requested the Administration to provide a response to members' concerns before the next meeting. DS(EF)(A) agreed.

**III. Date of next meeting**

47. Members agreed that the next meeting would be held on 19 April 2001 at 8:30 am.

48. The meeting ended at 10:30 am.

Legislative Council Secretariat  
13 June 2001