

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2001

Immediate Closure Order under the Proposed New Section 128C

Introduction

At the meeting of the Bills Committee on the *Public Health and Municipal Services (Amendment) Bill 2001* held on 15 June 2001, Members requested the Administration to reconsider the relevant provisions of the Bill such that a simple, fast and cost efficient appeal mechanism could be provided to aggrieved parties in respect of the issue of an immediate closure order by the Director of Food and Environmental Hygiene (DFEH) under the proposed section 128C. This paper sets out a new proposal from the Administration to address Members' concern.

Administration's Consideration

2. The purpose of having the new Section 128 C is to tighten the control on unhygienic food premises posing immediate health hazard so as to better safeguard public health. Operationally, DFEH will exercise her power very carefully on the advice of a medical officer after having due consideration of all the factual elements and scientific analysis. Moreover, we have put in place an appeal mechanism for any persons who has an interest in the closed premises or who is aggrieved by the closure order (referred to as "affected parties" thereafter) to challenge the decisions of DFEH (i.e. proposed sections 128C (7) and (20)).

3. Having stated the above, we also note Members' concern that the timing for such appeals cannot be easily ascertained and may adversely affect the business of the affected parties whose food premises have been closed by DFEH. We also note Members' concern that the affected parties may not have sufficient knowledge or funds to proceed with the judicial appeal process on their own.

4. In considering Members' views, we must stress that it would be inappropriate to stipulate in the Bill a time limit for the court to hear a case as this may unduly interfere with the work of the court in managing the cases that come before it. Moreover, any proposal for a simple, fast and cost efficient appeal mechanism should not affect the execution of the closure order which is vital for the protection of public against any immediate health hazard.

Administration's Latest Proposal

5. Having regard to Members' concerns and the Administration's consideration, we propose to set up an appeal board under the Bill to hear appeal cases in relation to -

- (a) the issue of an immediate closure order by DFEH; and
- (b) the decision of DFEH not to rescind the order.

Details of the proposal are set out below -

Composition of the Appeal Board

- The Appeal Board should comprise of one Chairman and a panel of not less than 15 persons who should not be public officers.
- Among the panel, two to three persons will also be appointed as Deputy Chairmen of the Appeal Board.
- The Chairman of the Appeal Board should be a person who is a retired magistrate. The person should have previously served for more than 10 years as a magistrate.
- As regards panel members, we will try to seek suitable persons from the community, including medical doctors, professionals, academics, members of consumer groups and District Council members.

Proposed Composition, Functions and Power of the Board

- A sitting of the Appeal Board shall consist of the Chairman or a Deputy Chairman who shall preside at the hearing, and three persons selected in rotation from the panel.
- The function of the Board is to 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).
- The Board may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law.
- The Board may confirm, suspend or disallow the closure order, confirm DFEH's decision of not rescinding the closure order, or order DFEH to issue a notice to rescind the order, as the case may be, after hearing the representations from the affected party and the Authority.

Staff

- The Secretary for the Environment and Food may appoint a secretary to the Board and such other staff as may be necessary.

Appeals to the Board

- Any affected parties may, within 7 days after the day on which the order was made or on which the notice of refusal to rescind the closure order was served, or such longer time as the Chairman may allow, appeal to the Appeal Board against DFEH's decision.
- The lodging of an appeal to the Board does not operate as a stay of execution of a closure order unless the Chairman otherwise orders.
- The appellant and the Authority shall be entitled to be heard either in person or through representative(s).
- The Secretary to the Board should fix the date, time and venue for the hearing in consultation with the Chairman or the Deputy Chairman (if he is to preside at the hearing) and serve on all parties to the appeal a notice of the date, time and venue at least 2 days before the date fixed for the hearing.
- The appellant may abandon the appeal before the hearing by notice in writing lodged with the Secretary.
- If any party to the appeal fails to attend or be represented at a hearing, the Board may either adjourn the hearing to a date and time as it thinks fit if it is satisfied that the failure to appear is due to reasonable cause or proceed to hear and determine the appeal in the party's absence.
- The Board must give reasons for its decisions and notify parties to the appeal its decision as soon as practicable.

Way Forward

6. We consider that the above proposal should be able to address Members' concerns. In the first place, the appeal procedure will be easily understood by any affected party as we envisage that he needs only to fill in a relatively simple "Notice of Appeal" form to initiate an appeal. (The form will be similar to the attached notice of appeal form for an appeal lodged with the Licensing Appeals Board.) Moreover, with a relatively simple set-up, the Secretary to the Board will be able to arrange for an appeal within a short period. While the exact number of days before an appeal is heard will be subject to the availability of Chairman/Deputy Chairman and panel members, we

envisage that an appeal hearing can probably be arranged within 10 working days.

7. Subject to Members' views, we are prepared to introduce CSAs along the above line for consideration by Members.

Environment and Food Bureau

July 2001

LICENSING APPEALS BOARD
NOTICE OF APPEAL

To: The Secretary, Licensing Appeals Board

1. Full name of Appellant:..... (English)
..... (Chinese)

2. Address of Appellant:
Telephone No of Appellant:

3. Address of Appellant for service of documents (if different from the above):
.....

4. Details of decision appealed against:
(Please attach a copy of the decision issued by the licensing authority and indicate the particular aspect(s) being the subject of the appeal.)
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5. The grounds for this appeal are:
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(Please set them out in full and attach additional sheets, if necessary.)

Dated thisday of.....20

.....
(Signature of Appellant)

- Note: (1) You are required to attach to this notice copies of all documents, if any, on which you intend to rely in support of your appeal.
(2) The completed form should be sent to the Secretary, Licensing Appeals Board at Room 1013, 10/F Citibank Tower, 3 Garden Road, Central, Hong Kong
(3) For enquiries, please contact the Licensing Appeals Board Secretariat at 21363331 or by fax at 21363282.