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21 December 2001

Mrs Constance Li  
Clerk to Bills Committee  
Public Health and Municipal Services (Amendment) Bill  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong  
(Fax: 2509 0775)

Dear Mrs Li,

**Bills Committee on  
Public Health and Municipal Services (Amendment) Bill 2001  
Follow-up to meeting on 2 November 2001**

As follow-up to the Bills Committee meeting on 2 November 2001, we have amended the draft CSAs (copy attached) to incorporate amendments, where appropriate, in accordance to the views expressed by Members. Specifically, the last sentence of Form I has been amended to reflect that the initial appeal against the decision of the Director of Food and Environmental Hygiene would be to the Appeals Board. Additionally, technical amendments have also been incorporated into the latest CSAs as highlighted in the English and Chinese copies of the 6<sup>th</sup> revised draft attached.

Some Members have proposed at the last Bills Committee meeting to amend section 128D(13) to allow the Court of First Instance to vary the decision of the Appeals Board. We have studied the matter and believe that a person would likely have reason to appeal to the Court of First Instance if he is dissatisfied with a decision of the Appeals Board under section 128D(13)(b) which –

- (a) confirms the Director of Food and Environmental Hygiene's decision not to issue a notice under section 128C(6) to rescind a closure order;
- (b) confirms a closure order; or

(c) fails to suspend a closure order.

It is, therefore, considered sufficient for the Court of First Instance to be empowered under section 128D(16) to either confirm or reverse the decision appealed against.

I should be grateful if you could circulate the latest draft CSAs for Members' consideration.

Yours sincerely,

( David K K Lau)  
for Secretary for the Environment and Food

c.c.

DFEH (Attn: Mr Warner Cheuk  
Ms Winnie So)

D of J (Attn: Mr Yip Wing-sang  
Mr Lawrence Peng)

Drafter: L PENG

File Ref: LDT/384/00/25C

#### DRAFTING HISTORY TABLE

Draft no.	Release date	DocsOpen version
1 <sup>st</sup> working draft	2.4.2001	#41837 v1
2 <sup>nd</sup> working draft	20.4.2001	#41837 v1
2 <sup>nd</sup> working draft (revised)	25.4.2001	#41837 v1
2 <sup>nd</sup> working draft (2 <sup>nd</sup> revised)	26.4.2001	#41837 v1
1 <sup>st</sup> draft	21.5.2001	#41837 v2
2 <sup>nd</sup> draft	29.5.2001	#41837 v3
2 <sup>nd</sup> draft (revised)	30.5.2001	#41837 v4
2 <sup>nd</sup> draft (2 <sup>nd</sup> revised)	7.6.2001	#41837 v5
3 <sup>rd</sup> draft	30.8.2001	#41837 v6
3 <sup>rd</sup> draft (revised)	3.9.2001	#41837 v7
3 <sup>rd</sup> draft (2 <sup>nd</sup> revised)	10.9.2001	#41837 v8
4 <sup>th</sup> draft	3.10.2001	#41837 v9
4 <sup>th</sup> draft (revised)	6.10.2001	#41837 v10
4 <sup>th</sup> draft (2 <sup>nd</sup> revised)	9.10.2001	#41837 v11
5 <sup>th</sup> draft	17.10.2001	#41837 v12
5 <sup>th</sup> draft (revised)	23.10.2001	#41837 v13
5 <sup>th</sup> draft (2 <sup>nd</sup> revised)	26.10.2001	#41837 v14
5 <sup>th</sup> draft (3 <sup>rd</sup> revised)	29.10.2001	#41837 v15
5 <sup>th</sup> draft (4 <sup>th</sup> revised)	31.10.2001	#41837 v16
<a href="#">6<sup>th</sup> draft</a>	<a href="#">21.11.2001</a>	<a href="#">#41837 v17</a>
<a href="#">6<sup>th</sup> draft (revised)</a>	<a href="#">7.12.2001</a>	<a href="#">#41837 v18</a>

PUBLIC HEALTH AND MUNICIPAL SERVICES  
(AMENDMENT) BILL 2001

PUBLIC HEALTH AND MUNICIPAL SERVICES  
(AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment and Food

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In the heading, by adding "<b>and commencement</b>" after "<b>title</b>".</p> <p>(b) By renumbering <del>it the clause</del> as <del>section</del> 1(1).</p> <p>(c) By adding –</p> <p style="padding-left: 40px;">"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for <del>the</del> Environment and Food."</p>
2	<p>(a) By adding –</p> <p style="padding-left: 40px;">"(ab) by repealing subsection (1A);".</p> <p>(b) In paragraph (b), by deleting the full stop at the end and substituting a semicolon.</p> <p>(c) By adding –</p> <p style="padding-left: 40px;">"(c) in subsection (10)(c), by repealing "撕去" and substituting "移去"."</p>
3	<p>(a) In the proposed section 128A, in the heading, by deleting "<b>and</b></p>

**128C**" and substituting "**128C and 128D**".

(b) In the proposed section 128A(1), by deleting "and 128C" and substituting "**128C and 128D**".

(c) By deleting the proposed section 128A(1)(b) and substituting –

"(b) any premises –

(i) on or from which any restricted food specified in Schedule 2 to the Food Business Regulation (Cap. 132 sub. leg.) is sold or offered or exposed for sale; or

(ii) on which any such food is possessed for sale or for use in the preparation of any article of food for sale;".

(d) In the proposed section 128A(1)(d), by deleting "regulation" and substituting "section".

(e) In the proposed section 128A(2) –

(i) by deleting "and 128C" and substituting "**128C and 128D**";

(ii) in the definition of "immediate health hazard", by deleting "from or handled or sold on" and substituting "on or from, or handled or possessed on,";

(iii) by adding –

""Appeal Board" (上訴委員會) means the

Appeal Board on Closure Orders

(Immediate Health Hazard) established under section 128D;

"Chairman" (主席) means the Chairman of the Appeal Board appointed under section 128D(3);

"Deputy Chairman" (副主席) means the First Deputy Chairman or the Second Deputy Chairman of the Appeal Board appointed under section 128D(3);

"use" (用、使用), in relation to any premises referred to in subsection (1)(c), includes occupy."

- (f) In the proposed section 128A(3) –
  - (i) by deleting "from or handled or sold on" wherever it appears and substituting "on or from, or handled or possessed on,";
  - (ii) in paragraph (b), by deleting "a contaminated or unapproved source" and substituting "an unapproved source or from a source that, as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, is contaminated with pathogens, biotoxins, chemicals or other substances".
- (g) In the proposed section 128A, by adding –

"(4) In subsections (2) and (3) –

- (a) a reference to food supplied on or from any premises includes food sold, or offered or exposed for sale, on or from the premises;
- (b) a reference to food handled on any premises includes food manufactured on the premises; and
- (c) a reference to food possessed on any premises means food possessed on the premises for sale or for use in the preparation of any article of food for sale."

(h) In the proposed section 128B(1) –

- (i) in paragraph (a) –
  - (A) by deleting "將" and substituting "使用";
  - (B) by deleting "作某項用途";
- (ii) in paragraph (b), by adding "進行" before "第";
- (iii) by deleting "(as the case may be) on any premises" and substituting "on any premises (as the case may be)";
- (iv) by deleting "subsection" and substituting "subsections (1A) and";
- (v) by deleting "作如此用途、" and substituting "如此使用、";
- (vi) by deleting "如此進行" and substituting "進行".

- (i) In the proposed section 128B, by adding –
  - "(1A) Subsection (1) does not apply if –
    - (a) the use or the activity is required under section 30(1) of the Food Business Regulation (Cap. 132 sub. leg.) to be permitted;
    - (b) a food business within the meaning of that Regulation is carried on on or from the premises; and
    - (c) the food business is required under that Regulation to be licensed and is licensed under that Regulation."
- (j) By deleting the proposed section 128B(2)(a) and substituting –
  - "(a) at least 7 days before the date fixed for the hearing of the application, a copy of the notice of intention to apply for the closure order, in both English and Chinese –
    - (i) was affixed at a conspicuous place on the premises; and
    - (ii) was served on the owner of the premises by sending the copy by registered post addressed to that owner's last known place of business or residence;"
- (k) In the proposed section 128B(4) –



- (i) by deleting "to" where it first appears;
  - (ii) by deleting paragraph (a) and substituting –
    - "(a) if, at the date of application for the order,  
the premises are used for human habitation,  
to prevent such habitation on the premises;  
or";
  - (iii) in paragraph (b), by adding "to" before "affect".
- (l) In the proposed section 128B(7)(a), by deleting "the premises or the activity" and substituting ", or the activity to be conducted on, the premises".
- (m) In the proposed section 128B(8) –
- (i) by adding "或安排他人將" after "須將";
  - (ii) by deleting "或安排他人如此行事";
  - (iii) by adding "或安排他人將" after "可將";
  - (iv) by deleting "或安排將其截斷".
- (n) In the proposed section 128B(16), by deleting "掌控" and substituting "控制".
- (o) In the proposed section 128C(1), by deleting "to which this section applies" where it secondly appears.
- (p) In the proposed section 128C(2) –
- (i) by deleting "to" where it first appears;
  - (ii) by deleting paragraph (a) and substituting –
    - "(a) if, at the date of making of the order, the

premises are used for human habitation, to prevent such habitation on the premises; or";

(iii) in paragraph (b), by adding "to" before "affect".

(q) In the proposed section 128C(3), by deleting everything after "copy of it" and substituting –

" –

(a) is affixed at a conspicuous place on the premises in respect of which the order is made; and

(b) is served on the owner of those premises by sending the copy by registered post addressed to that owner's last known place of business or residence."

(r) In the proposed section 128C(6)(a) –

(i) by deleting "或活動";

(ii) by deleting "用途或擬" and substituting "使用或擬在該處所內".

(s) In the proposed section 128C(6)(b), by adding "內" before "進行".

(t) In the proposed section 128C(7) –

(i) by deleting "court" where it first appears and

substituting "Chairman";

(ii) by deleting "court" where it secondly appears and substituting "Appeal Board".

(u) By deleting the proposed section 128C(8).

(v) In the proposed section 128C(9) –

(i) by deleting "lodging" and substituting "making";

(ii) by deleting "court" and substituting "Chairman".

(w) By deleting the proposed section 128C(10).

(x) In the proposed section 128C(11) –

(i) by adding "或安排他人將" after "須將";

(ii) by deleting "或安排他人如此行事";

(iii) by adding "或安排他人將" after "可將";

(iv) by deleting "或安排將其截斷".

(y) In the proposed section 128C(14)(a), by deleting "(3)" and substituting "(3)(a)".

(z) (y) In the proposed section 128C(19), by deleting "掌控" and substituting "控制".

(za) In the proposed section 128C(20) –

(i) by deleting "court" where it first appears and substituting "Chairman";

(ii) by deleting "court" where it secondly appears and substituting "Appeal Board".

(zab) By deleting the proposed section 128C(21).

(zbc) In the proposed section 128C(22) –

- (i) by deleting "lodging" and substituting "making";
- (ii) by deleting "court" and substituting "Chairman".

(zed) By deleting the proposed section 128C(23).

(zde) By adding –

**"128D. Appeals to Appeal Board on Closure Orders  
(Immediate Health Hazard)**

(1) There is established an appeal board to be known as the Appeal Board on Closure Orders (Immediate Health Hazard).

(2) The functions of the Appeal Board are to hear and determine any appeal made to the Appeal Board under section 128C(7) or (20).

(3) The Chief Executive shall appoint from among persons who are qualified for appointment as District Judges under section 5 of the District Court Ordinance (Cap. 336) –

- (a) a Chairman of the Appeal Board;
- (b) a First Deputy Chairman of the Appeal Board; and
- (c) a Second Deputy Chairman of the Appeal Board.

(4) The Chief Executive shall appoint a panel of not less than 18 persons, not being public officers,

whom he considers suitable for appointment under subsection (8)(b) as members of the Appeal Board to hear an appeal.

(5) An appointment under subsection (3) or (4) shall be notified in the Gazette and shall be for a term of not more than 3 years. A person appointed under subsection (3) or (4) may be re-appointed, and may resign by notice in writing to the Chief Executive.

(6) The Secretary for the Environment and Food may appoint –

- (a) a secretary to the Appeal Board;
- and
- (b) such other staff to assist the secretary as the Secretary considers necessary.

(7) The parties to an appeal to the Appeal Board are the appellant and the Authority. A party to an appeal may be present at the hearing of the appeal and may –

- (a) make representations in person; or
- (b) be represented by counsel or solicitor or, with the approval of the Chairman, by any other person authorized by the party in writing.

The Authority may also be represented by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).

(8) For the purposes of hearing an appeal, the members of the Appeal Board are –

- (a) the Chairman or a Deputy Chairman, who shall preside; and
- (b) 2 other persons, selected in rotation from the panel referred to in subsection (4), who are appointed by the Chairman to hear the appeal.

(9) If, for any period, the Chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the First Deputy Chairman of the Appeal Board shall act as Chairman and as such perform all the functions of the Chairman during that period.

~~(9A) If, for any period, a Deputy Chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the other Deputy Chairman shall act in the place of the Deputy Chairman precluded from performing his functions and in so acting perform all the functions of that Deputy~~

~~Chairman, including any functions that Deputy Chairman would have been required to perform under subsection (9), during that period.~~

~~(9B) If, for any period, a person appointed under subsection (8)(b) or this subsection to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the Chairman may appoint another person, selected in rotation from the panel referred to in subsection (4), to act in the place of the person precluded from performing his functions and in so acting, to perform all the functions of that person during that period.~~

~~(9C) The hearing of an appeal may, with the consent of the parties to the appeal, continue notwithstanding a change in the membership of the Appeal Board.~~

(10) If, for any period, a Deputy Chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the other Deputy Chairman shall act in the place of the Deputy Chairman precluded from performing his functions and in so acting perform all the functions of that Deputy Chairman, including any functions that Deputy Chairman would have been required to perform under

subsection (9), during that period.

(11) If, for any period, a person appointed under subsection (8)(b) or this subsection to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the Chairman may appoint another person, selected in rotation from the panel referred to in subsection (4), to act in the place of the person precluded from performing his functions and in so acting, to perform all the functions of that person during that period.

(12) The hearing of an appeal may, with the consent of the parties to the appeal, continue notwithstanding a change in the membership of the Appeal Board.

(103) For the purposes of an appeal, the Appeal Board –

(a) 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 evidence in civil or criminal proceedings; and

(b) may –



- (i) on an appeal under section 128C(7), confirm the Authority's decision or order the Authority to issue a notice under section 128C(6); or
- (ii) on an appeal under section 128C(20), confirm, suspend or disallow the closure order.

(114) The decision of the Appeal Board on an appeal shall be that of the majority of the members hearing the appeal.

(125) The Appeal Board shall give reasons in writing for its decisions. The secretary to the Appeal Board shall serve a copy of the Appeal Board's decision and of the reasons for the decision on the parties to an appeal.

(136) A person who appeals to the Appeal Board, if dissatisfied with the decision of the Appeal Board, may appeal to the Court of First Instance within 14 days after receiving a copy of the decision and the reasons for the decision. The Court of First Instance may confirm or reverse the decision appealed against. The

decision of the Court of First Instance is final.

~~(13A17)~~ The making of an appeal under subsection ~~(136)~~ does not operate as a stay of execution of a closure order unless the Court of First Instance otherwise orders.

~~(148)~~ Subject to this section and to rules made under subsection ~~(1620)~~, the person presiding may determine the procedure at the hearing of an appeal made to the Appeal Board.

~~(159)~~ The Chairman may, on application in writing by a person and if satisfied that there is good reason for doing so –

- (a) extend the time within which that person may appeal to the Appeal Board under section 128C(7) or (20); and
- (b) order a stay of execution of the closure order to which an appeal made by that person under section 128C(7) or (20) relates, pending the determination of the appeal.

~~(1620)~~ The Chairman may, in consultation with the Secretary for the Environment and Food, make rules –

- (a) regulating the making of appeals to the Appeal Board;
- (b) specifying the documents to be lodged or served in relation to appeals; and
- (c) providing for the hearing and determining of those appeals and the enforcement of the decisions of the Appeal Board.

The rules so made are subsidiary legislation."

4 By deleting everything after "adding –" and substituting –

- ""128B Director of Food and Environmental Hygiene
- 128C Director of Food and Environmental Hygiene
- 128D Director of Food and Environmental Hygiene".

6 (a) By deleting "by adding –" and substituting –

" –

- (a) in Form F, in Note 3, by repealing "撕去" and substituting "移去";
- (b) in Form G, in Note 2, by repealing "撕去" and substituting "移去";
- (c) by adding –".

(b) In the proposed Form H –

- (i) by adding "or occupied" after "used";
- (ii) by deleting "a notice" and substituting "a copy of the notice";
- (iii) by adding "and served on the owner of the premises/vessel\*" before "as required".

(c) In the proposed Form I –

- (i) by adding "owner and" before "occupier";
- (ii) by adding "owner and" before "master";
- (iii) by deleting "NOW on proof to my satisfaction" and substituting "I now have reasonable cause to believe";
- (iv) by deleting "the use of the premises/vessel/that part of the vessel/the activity\*" and substituting "the use or occupation of/the activity to be conducted on or in\* the premises/vessel/that part of the vessel\*";
- (v) by adding "or occupied" after "not be used";
- (vi) by adding "/in the vessel/in that part of the vessel\*" after "conducted on the premises";
- (vii) by deleting "court may allow, appeal to the court to seek legal remedy" and substituting "Chairman of the Appeal Board on Closure Orders (Immediate Health Hazard) may allow, appeal to that Appeal Board against this order". ~~by deleting "to seek legal remedy" and substituting "against this order".~~

- (d) In the proposed Form J –
- (i) by adding "owner and" before "occupier";
  - (ii) by adding "owner and" before "master";
  - (iii) by adding "or occupation" after "the use";
  - (iv) by deleting "activity conducted on\*" and substituting "the activity to be conducted on or in\*";
  - (v) by adding "or occupied" after "not be used";
  - (vi) by adding "/in the vessel/in that part of the vessel\*" after "conducted on the premises".