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Secretary for Environment and Food
(Attention: Ms Eva To
Principal Assistant Secretary)
Environment and Food Bureau
10/F Citibank Tower
3 Garden Road
Hong Kong

8 March 2001

BY FAX

Fax No. : 2136 3281
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Dear Ms TO,

**Public Health and Municipal Services
(Amendment) Bill 2001**

Thank you for your letter of 27 February 2001. We have the following questions arising from your reply and new points for your further comments -

New section 128A(2)

It is noted, unlike the definitions of "premises" and "vessel" in section 2(1) of Cap. 132, that the definition of "premises" in the provision includes any place, vessel and any part of a place or vessel. It is fully appreciated that the definition of "premises", which applies to new sections 128A, 128B and 128C, facilitates easy reference. However, in new Forms H, I and J which are made under new sections 128B and 128C, separate reference is made to premises, vessel or part of the vessel. Should the definition of "premises" in new section 128A(2) or the definitions of "premises" and "vessel" in section 2(1) apply to the new Forms?

New section 128B(1)

The scope of new section 128B is already defined under new section 128A(1) which, according to your categorization, contains use of any premises for certain purposes (paragraphs (a) and (c)) and specified activities to be conducted on any premises (paragraphs (b), (d) and (e)). To follow your categorization and address your concern, it is proposed that the opening part of new section 128B(1) be redrafted along the following line -

- "(1) Where any premises is used for -
(a) any purpose mentioned in section 128(A)(1); or
(b) any activity mentioned in section 128(A)(1),
is required to be licensed or permitted"

The proposed drafting is also consistent with your drafting of new section 128B(6)(b).

New 128C(5) & (20)

In terms of the persons intended to cover, what is the difference between "any person having an interest in any premises" and "a person who is aggrieved by an order"?

New Form I

(i) In the first paragraph, it states that "NOW on proof to my [the Authority] satisfaction" . However, under new section 128C(1), the Authority can only exercise his power under the provision if he "has reasonable cause to believe" . Would the wordings used in new Form I impose criteria on the Authority, which is different from that used in new section 128C(1), when considering whether or not to exercise the power to make a closure order? For the avoidance of doubt, it is proposed that the material part in New Form I be redrafted along the following line -

"NOW I have reasonable cause to believe" .

- (ii) In paragraph 2(a), would it be appropriate to delete "the premises/vessel/that part of the vessel/the activity*" and substitute "/the activity to be conducted on the premises/vessel/that part of the vessel*" (c.f. similar drafting in paragraph 1 of new Form H).
- (iii) In paragraph 3, it states that any person aggrieved by the order may appeal to court to seek legal remedy. However, it is noted that, in new section 128C(21), the court may confirm, suspend or disallow the order without saying that the court could make other awards, for example, monetary compensation. Is it intended that the court could grant legal remedies other than those set out in new section 128C (21)? If that is the intention, would it be necessary to make it clear in new section 128C(21)?

We would be grateful for your comments, in both languages, at your earliest convenience.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr. SUEN Wai-chung, SALD)
LA

Letterhead of Environment and Food Bureau Government Secretariat

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Mr Stephen Lam

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Dear Mr Lam,

Public Health and Municipal Services (Amendment) Bill 2001

Thank you for your letter of 8 March.

Our comments on the points raised in your letter regarding the above bill are set out in the following paragraphs for your consideration.

New section 128A(2)

The definition of "premises" as set out in the new section 128A(2) should apply to the new Forms too. The separate mention of "premises", "vessel" and "part of a vessel" in the Forms is not absolutely necessary but is so done for "user-friendliness" to facilitate a layman in understanding the Forms who will unlikely refer to the relevant definition under the new sections when reading the Forms.

New section 128B(1)

The current draft should have served the intended purpose of avoiding unnecessary argument as to whether a particular activity is or is not a "use". The basis of reference is mainly "premises to which this section applies", "Activity" is put in, as we have explained before, for the sake of clarity. Thus, we think that there is no need for further amendment in this aspect.

New sections 128C(5)&(20)

It is a usual practice to allow "person aggrieved" a right to appeal, while subsection (5) envisages an application to rescind the order from persons who have an interest in the premises but may not be "aggrieved". For example, a landlord who certainly has an interest in the premises may welcome the closure order and upon the removal of the immediate health hazard, may apply for rescission of the order.

New Form I

(i) Our intention is that the Authority should have reasonable cause to believe that the use of the premises poses immediate health hazard before making the closure order. Both provisions are so drafted with the above intention in mind. However, for the sake of consistency, we are prepared to consider your suggested amendment and will discuss this further with our legal advisor and law draftsman during the scrutiny of the Bill at the Bills Committee.

(ii) For the sake of consistency, we are prepared to consider amending the paragraph to read "... and the use of/activity conducted on* the premises/vessel/that part of the vessel* has been licensed or permitted" having regard to similar provision in the first paragraph of Form J.

(iii) There is no other intended legal remedy other than those set out in new section 128C(21). The Form is so worded to make it easier for the person affected to take action. For the sake of consistency, we are prepared to amend the Form.

Yours sincerely,

(Ms Eva To)
for Secretary for the Environment and Food

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