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**Paper for the House Committee meeting
on 11 January 2002**

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

Purpose

This paper reports on the deliberations of the Bills Committee on Public Health and Municipal Services (Amendment) Bill 2001.

Background

2. To protect public health, all food establishments are required to operate with the appropriate licences or permits, such as licences for general restaurants, light refreshment restaurants, food factories, siu mei and lo mei shops and slaughterhouses, and permits for selling sushi and sashimi. Following the outbreak of several cholera and food poisoning cases in 1997 which involved unhygienic food establishments, there have been increasing calls from the community for the exercise of tighter control over food establishments, in particular unlicensed food establishments, to protect public health.

The Bill

3. The Bill seeks to amend the Public Health and Municipal Services Ordinance (Cap. 132) to provide for -

- (a) the making of closure order by the court to close premises on which specified activities are conducted without the requisite licences, permits or permissions under the Ordinance; and
- (b) the making of closure order by the Director of Food and Environmental Hygiene (DFEH) to close premises the use of which poses an immediate health hazard.

The Bills Committee

4. At the House Committee meeting on 2 March 2001, Members agreed to form a Bills Committee to study the Bill. Chaired by Hon Fred LI Wah-ming, the Bills Committee has held 10 meetings, including one meeting to listen to the views of deputations.

5. The membership list of the Bills Committee is in **Appendix I**. The names of organisations which have given views to the Bills Committee are in **Appendix II**.

Deliberations of the Bills Committee

6. The Bills Committee generally supports the principle that there should be tighter control over unlicensed food establishments and unhygienic premises. However, some members have reservations about empowering DFEH to make a closure order against a licensed food establishment on the ground that it poses an immediate health hazard, without the need to go through court procedures.

7. The Bills Committee has examined thoroughly the detailed provisions in the Bill and discussed ways to address the concerns raised by members and the trade. The Bills Committee's deliberations are summarized below.

Unlicensed food establishments

Justifications for introducing the new section 128B

8. The Administration has advised that under the existing statutory scheme, the process for applying for a closure order is much protracted, taking as long as nine months. The licensing authority i.e. the Food and Environmental Hygiene Department, has first to prosecute the operator of an unlicensed food establishment by summons and secure a conviction before applying to a Magistrate Court for a Prohibition Order. Only when the Prohibition Order has been breached and the operator convicted can the Department apply for a closure order. Unscrupulous operators have taken advantage of the time in between to operate small-scale and short-term food businesses on unlicensable premises. The Administration points out that when a closure order is finally served, many operators simply wind up their business and operate elsewhere, while some try to delay the process by changing the name of the operator or the type of food business. This has rendered the whole system ineffective. In 2000, the Department succeeded in applying for only one closure order out of 558 Prohibition Orders.

9. To tackle the problem of unlicensed food establishments more effectively, the Administration has proposed to add a new section 128B to the Ordinance, to empower DFEH to make a direct application to the court for a closure order to close premises where specified activities are carried out without the requisite licence or permit. Under the new procedure, the application of a closure order will no longer have to rely on evidence of breaches of a Prohibition Order. This will significantly reduce the time required to close an unlicensed food establishment from nine months to one and a half months. The immediate targets of the proposed section 128B are the unlicensable premises such as those flimsy structures used for illegal slaughtering and roasting activities.

Time required to obtain a food business licence

10. Members of the Bills Committee are concerned whether some food establishments are forced to operate without a licence because it takes an unreasonably long time to apply for one. The Administration has advised that a number of improvement measures have been introduced since June 2000 to shorten the process for restaurant licensing. The Letter of Requirements for Provisional Licence can now be issued in 20 working days instead of 26 working days. A Resource Centre has also been set up to provide assistance and information on food licensing matters.

11. According to the Administration's statistics for the period June-December 2000, the average time taken to issue a provisional restaurant licence was 2.9 months, while the shortest time was one month. As for the full licence, the average time taken was 7.5 months and the shortest, 3.5 months. As regards members' request that the Administration should further shorten the time for the issue of a full licence, the Administration has explained that this depends on whether and when the applicant can provide the requisite certificates of compliance relating to fire and building safety. The Administration points out that a Provisional Licence is valid for six months, and that food premises with a Provisional Licence will not be regarded as unlicensed premises for the purposes of the new section 128B.

12. The Administration has also advised that a consultancy study has been commissioned to explore ways to further simplify the licensing procedures for other types of food establishments, such as fresh provision shops, food factories, siu mei and lo mei shops.

Licensed food establishments selling restricted food without the requisite permit or permission

13. Some members have expressed concern that the new section 128B(1) may also catch some licensed food establishments if they sell restricted food such as sushi without the necessary permit or permission. The Administration has clarified that if certain activities which require to be permitted are carried

on at licensed food premises, the Department will take enforcement action in accordance with the relevant provisions or Regulations under Cap.132 instead of applying for a closure order. To remove any ambiguity in this respect, the Administration has agreed to introduce Committee Stage amendments (CSAs) to the effect that the new section 128B will not apply to licensed food premises, if certain activities which require permission are carried out at these premises without permission.

Unhygienic food establishments

Empowering DFEH to make a closure order under the new section 128C

14. Members have noted that the Prevention of Infectious Diseases Regulations (Cap. 141 sub. leg.) already contain provisions empowering the Director of Health (D of H) to isolate and disinfect any premises (including food establishments) to prevent the spread of infectious diseases. Some members have questioned the need for empowering DFEH to make a closure order under Cap. 132, and whether there will be overlapping of powers between D of H and DFEH.

15. The Administration has explained that the Prevention of Infectious Diseases Regulations under Cap. 141 cannot be invoked to deal with food hygiene incidents caused by factors other than infectious diseases. Moreover, the Regulations cannot effectively deal with cases where the hygiene conditions are so bad as to pose serious and/or immediate threat to public health and safety. The new section 128C is to empower DFEH to close the premises if he has reasonable cause to believe that the use of such premises poses an immediate health hazard.

16. Hon Tommy CHEUNG and some trade representatives have expressed reservations about the proposal that a licensed food establishment can be closed by DFEH without the need to go through court procedures, while closure of an unlicensed food premises will require a court order. They are of the view that since licensed food establishments are already subject to regular inspection and surveillance by the Department, it is unlikely that the hygiene conditions of these licensed premises will deteriorate to such an extent as to pose an immediate health hazard. They consider that the existing legislation and licensing conditions are adequate in ensuring the food safety and hygiene standards of licensed premises.

17. The Administration has explained that as the Department is the authority for approving or rejecting food licence applications, it is only fair to the parties concerned that a closure order against an unlicensed establishment under the new section 128B will continue to be issued by the court instead of DFEH. The Administration has further explained that the hygiene conditions of food premises can change rapidly, and that in the past, food incidents also affected licensed food premises. The Administration considers that although

there is continuous enforcement against any unhygienic conditions in licensed premises, the lack of power for DFEH to close and prohibit the use of such premises has undermined the Department's ability to ensure public health and safety.

18. The Administration concludes that it is necessary to empower DFEH to make closure orders in respect of those premises (licensed or unlicensed) which pose an immediate health hazard. The Administration has assured members that DFEH will personally exercise his power under section 128C with due care, having regard to the advice of a medical officer as well as the results of laboratory tests and/or circumstantial evidence, and that DFEH will not delegate his power under section 128C to other officers.

Definition of "immediate health hazard"

19. Some members have sought clarification on the definition of "immediate health hazard" in the proposed section 128A. They consider the definition of "immediate health hazard" and terms such as "likely to cause" in section 128A(2) and "reasonable cause" in section 128C(1) too general. They suggest that the Bill should include specific criteria or conditions for the making of closure orders by DFEH on grounds of "immediate health hazard" under the new section 128C.

20. The Administration has advised that it is not possible to provide in the Bill an exhaustive list of all possible scenarios that may constitute a "reasonable cause" for DFEH to make a closure order under the new section 128C. However, the four categories under the new section 128A(3) already include the most common circumstances that may pose an immediate health hazard. To address members' concerns, the Administration has provided some examples which may give rise to a "reasonable cause" under the new section 128C(1), such as -

- (a) premises consisting of flimsy structures of a make-shift nature and not provided with proper water supply, sewerage system nor equipment for proper storage of food;
- (b) food premises without proper water supply and the operator uses water drawn from a well near a latrine/aqua-privy, a dirty water storage tank or a polluted stream;
- (c) premises where clinical data shows that the food therein is contaminated and unfit for human consumption;
- (d) premises where laboratory evidence reveals presence of highly infectious pathogens, such as E.coli O157:H7 and Vibrio cholera O139, or high levels of toxic chemicals in food; and

- (e) breeding places of arthropod pest or habitats of rodents found on the premises; premises infested with a large number of cockroaches, with rodents roaming around or with heavy fly infestation.

21. Some members consider that there should be objective standards for "contamination of water" and "infestation of vermin" in the new section 128A(3). They point out that sometimes such hazard is caused by factors beyond the control of the operators of food premises, such as bursting of main water pipes, or serious rodent infestation in the vicinity.

22. The Administration has advised that the Department will follow the standards on hazards set by international authorities such as the World Health Organisation and Codex Alimentarius Commission in determining whether the water source of the food premises is contaminated. However, there are hazards, such as infestation of vermin, for which objective standard cannot be set, and risk assessment has to be made on a case-by-case basis.

23. The Administration has also advised that the provision on contamination of water source is mainly targeted at those food premises which use water from unapproved sources, and DFEH will base on inspection findings or laboratory evidence in determining whether the water is contaminated. To remove any ambiguity in this respect, the Administration has agreed to move CSAs to the proposed section 128A(3)(b) to this effect.

Partial closure of food premises

24. Hon Tommy CHEUNG has requested the Administration to consider restricting the execution of a closure order only to those parts of the food premises which have given rise to the immediate health hazard, for example, the fish tank in the case of ciguatera poisoning.

25. The Administration has explained that the definition of "premises" in Cap. 132 already includes "part of the premises", and it is possible to close part of a food court, or just one restaurant if the licence covers several restaurants. However, the Administration is of the view that on occasions it is not practical to close just part of the kitchen or a fish tank, because the whole premises will require thorough cleansing and disinfection in order to remove the health hazard. The Administration also advises that ciguatera poisoning is normally caused by a particular kind of fish or source of fish, and if this happens, more than one restaurant will be affected. In such cases, the Administration will not normally make a closure order against a particular food establishment, but will advise the food operators to suspend import from such food sources while investigations are being carried out.

Human habitation on premises which are subject to a closure order

26. The Administration has advised that in line with existing provisions in Cap. 132, the Bill has provided that a closure order will not operate to prevent human habitation on the premises other than habitation by a servant or watchman or caretaker. This is to avoid situations whereby individuals may be rendered "homeless" if the closure orders deny them access to their places of habitation. It should also not affect the use of any common area in any building so as to cause obstruction to public passage or fire escape. Some members are of the view that watchmen or caretakers who use the premises as their only residence at the time of the application or making of a closure order should also be allowed to stay on the premises. The Administration has accepted these members' views and agreed to move CSAs to this effect.

27. As regards the requirements for putting the premises under lock and seal and disconnecting all utility supplies, some members are concerned that the arrangements might affect those who use the premises for human habitation. The Administration has explained that it is necessary to lock and seal the premises which are subject to a closure order to prevent continuation of the prohibited activities on the premises. However, the Authority also has the discretion of not disconnecting the utility supplies in order not to affect human habitation.

"Unless" order

28. Members note that under the new section 128B(5), a closure order issued by the court against an unlicensed establishment will only come into operation on the eighth day after a copy of the order is posted on the premises. However, the closure order made by DFEH under the new section 128C on grounds of immediate health hazard will come into force immediately after a copy of it is posted on the premises. Hon Tommy CHEUNG and Hon Audrey EU have suggested that a grace period should also be provided for the execution of a closure order made by DFEH under the new section 128C. This may take the form of an "unless" order which will only come into force if the operator does not remove the health hazard, say, within 48 hours.

29. The Administration considers that an "unless" order goes against the legislative intent of the new section 128C and does not agree to the proposal. The Administration points out that the purpose of the new section 128C is to protect the public against exposure to immediate health hazards of which time is of the essence to remove such health hazard. If the legislation states explicitly that a short delay in closing the food premises is allowed, the Authority will have legal difficulty in proving to court and explaining to the public that the health hazard is an immediate one calling for a closure order.

30. The Administration also points out that, in reality, an operator always has the opportunity to make rectification when FEHD officers first approach

the operator for investigation of the case. A closure order will only be made under the new section 128C when the situation has become so serious that warrants immediate closure of the premises. Moreover, an operator or any person who has an interest in the premises concerned can apply to the Authority to rescind the order under section 128C(5), as soon as the health hazard has been removed. If the Authority refuses to issue a notice to rescind the closure order, the interested party can, within seven days of the service of the notice of refusal, appeal to the court against the Authority's decision.

Temporary order

31. The Bills Committee has noted the trade's concern about the possibility that a closure order may be made wrongfully under section 128C, and an operator should have the earliest opportunity to state his case before the closure order comes into operation. To address this concern, some members have proposed that a temporary order or an order nisi be issued, which will need explicit confirmation by the court within a few days. The purpose is to inform the operator of the reasons for the making of a closure order, and to enable him to state his case before the Magistrate Court if he so wishes. The Magistrate may confirm or cancel the order after listening to the reasons put forward by both parties. If the operator or owner of the premises does not turn up at the hearing, the order nisi may become an order absolute.

32. The Administration is of the view that an order nisi or temporary order does not differ much from a closure order made under the new section 128C, since a temporary order will still be executed pending the court hearing and it will not absolve the operator concerned from eliminating the immediate health hazard. The Administration also advises that it is not appropriate to stipulate in the Bill a time limit for the court to arrange a hearing, for example, to confirm a temporary order within a few days as suggested by members.

33. The Administration further explains that the new section 128C(7) and (20) already provide that any person who has an interest in the premises or is aggrieved by the closure order can appeal to the Magistrate Court against the decision of DFEH. Moreover, the Administration is prepared to provide a further appeal channel if the aggrieved is not satisfied with the Magistrate Court's decision on his appeal. In this connection, the Administration will delete the new section 128C(23) which states that the decision of the court is final.

Appeals mechanism in respect of closure orders made under section 128C

34. The Bills Committee has expressed strong views that the Administration should provide a fast, simple mechanism that can be activated easily to hear appeals against closure orders made by DFEH on grounds of immediate health hazard under the new section 128C. Although any aggrieved party can appeal to the court against such orders under the new section 128(20), some members

are worried that it may take a long time for the court to arrange a hearing because of its heavy workload. In this connection, Hon Andrew CHENG has suggested that the Licensing Appeals Board (LIAB) instead of the court should deal with such appeals.

35. The Administration has explained that the jurisdiction of LIAB as set out in section 125(8) and (9) of Cap. 132 is to hear all appeals lodged by the licensee or licence applicant when his/her licence is being cancelled, suspended or refused. However, the proposed closure order to be made by DFEH on grounds of immediate health hazard is not directly related to licensing matters, and such closure orders may be made against licensed or unlicensed premises. The Administration does not consider it appropriate to extend the jurisdiction of the LIAB to cover appeals against immediate closure of food establishments posing immediate health hazards.

36. The Administration has explained that the Magistrate Court is a competent authority to deal with appeals from food premises. At present, offences of operation of unlicensed food businesses and offences relating to unhygienic food are dealt with by the Magistrate Court. Moreover, closure orders of unlicensed food establishments are made by the Magistrate Court under the existing section 128 of Cap. 132. The Administration also points out that even if the jurisdiction of LIAB is expanded to include appeals against closure orders in respect of licensed premises, appeals against closure orders made in respect of unlicensed food establishments will still have to be dealt with by the Magistrate Court. The Administration considers it inappropriate and unfair to have two distinct authorities of different background to hear appeals against closure orders issued for the same purpose in respect of licensed and unlicensed premises.

37. As regards the time required for arrangement of hearings of appeals, the Administration advises that, based on past experience, the Magistrate Court should be able to hear an appeal, at the earliest, within six days from the time when the summons is issued by the court. Moreover, the First Clerk of the Magistrate Court has the discretion to fix an earlier date for hearing the appeal application if the urgency so justifies. The Administration has advised that a hearing of LIAB may take as long as 45 days due to statutory time limits in relation to the serving of meeting notices and lodging of documents.

38. To address members' concern that an independent, efficient channel should be provided for the aggrieved to appeal against closure orders made by DFEH under the new section 128C, the Administration proposes that a statutory Appeal Board be established to hear such appeals. A new section 128D will be introduced to set out the composition, jurisdiction and operation of the Appeal Board which is modelled on the operation of LIAB.

39. The Bills Committee has discussed with the Administration the proposed Appeal Board and the proposed section 128D in detail. Hon Audrey EU has pointed out that there will be resource implications for the establishment of an Appeal Board and providing secretariat support to the Board. While Hon Audrey EU and Hon Cyd HO still prefer the court to deal with appeals against closure orders made by DFEH, they have no strong views on the proposed Appeal Board provided that this is acceptable to the trade.

40. According to the Administration's initial proposal, the Appeal Board will consist of a Chairman who will be a retired magistrate, and a panel of not less than 15 persons who should not be public officers. Among the panel members, two or three persons will also be appointed as Deputy Chairman of the Appeal Board. The panel members will be drawn from different sectors of the community and will comprise medical doctors, professionals, academics, members of consumer groups and District Council members. The secretary to the Board will be provided by the Environment and Food Bureau. For the purpose of hearing an appeal, the board should comprise a chairman and two members selected by rotation from the panel.

41. The Bills Committee has suggested some amendments to the Administration's initial proposals. Some members consider that there should be a sufficiently large pool of panel members, say, 18 members, to ensure that a hearing can be arranged as soon as possible without being held up by the absence of some panel members. Members have also suggested that there should be a stand-by or roster system for the two Deputy Chairmen, to obviate the need for the Chief Executive to appoint a Deputy Chairman to act as the Chairman if the latter is ill or absent from Hong Kong. Moreover, as the Deputy Chairmen may stand in as the Chairman, they should also be required to hold the same legal qualifications as the Chairman and should not be members of the Appeal Board. Members also propose that a time limit should be set for the Board to notify the parties concerned the reasons of its decision, so as to allow sufficient time for the appellant to further appeal to the court if he so wishes.

42. The Administration has accepted members' suggestions and will move amendments accordingly. Some technical amendments will also be made to the relevant provisions and Form I in the Bill to reflect that the initial appeal against the decision of DFEH will be the Appeal Board. The Bills Committee notes that the Appeal Board may confirm, suspend or disallow the decision of DFEH. If the appellant is dissatisfied with the Appeal Board's decision, he may further appeal to the Court of First Instance which may confirm or reverse the decision of the Appeal Board.

43. The Bills Committee also notes that the Chairman of the Appeal Board may, in consultation with Secretary for the Environment and Food, make rules to regulate the making of appeals to the Appeal Board, specify the documents to be lodged or served in relation to appeals, and provide for the hearing and

determining of those appeals and the enforcement of the decisions of the Appeal Board. These rules will be subsidiary legislation subject to the Council's scrutiny.

Remedies for wrongful closure

44. Regarding some members' concern about damages to a food establishment caused by a wrongful closure, the Administration has advised that the affected parties can seek remedy or compensation under the common law. The new section 128C does not affect or limit the existing right of any person to seek remedies for wrongful closure or disposal/removal of any article or food in a closed premises. Furthermore, the existing section 138 of Cap. 132 provides that nothing in it shall be construed as relieving the Government from liability in respect of the acts of its servants.

Committee Stage amendments (CSAs)

45. The Administration has proposed amendments to address most of the concerns raised by members. Some technical amendments and textual improvements are also proposed for consistency and greater clarity after discussion with the legal adviser to the Bills Committee. A full set of the Administration's revised CSAs is in **Appendix III**. The Bills Committee has not proposed any CSAs.

Recommendation

46. The Bills Committee supports the resumption of Second Reading debate on the Bill on 23 January 2002. The deadline for notice of CSAs is 14 January 2002.

Advice sought

47. Members are invited to note the recommendation of the Bills Committee in paragraph 46.

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

Membership list

Chairman Hon Fred LI Wah-ming, JP

Members Hon Cyd HO Sau-lan
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 WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

(Total : 9 Members)

Clerk Mrs Constance LI

Legal Adviser Mr Stephen LAM

Date 27 March 2001

**Organisations which have given views to the
Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2001**

1. Hong Kong Federation of Restaurants and Related Trades
2. Chiu Chow Overseas Food Trade Merchants Association
3. Hong Kong Catering Industry Association
4. Karaoke Concern Group
5. Hong Kong Tourism Board
6. Association for Hong Kong Catering Services Management Limited
7. Federation of Hong Kong Restaurant Owners Limited
8. Consumer Council
9. Hong Kong Retail Management Association
10. Association of Better Business and Tourism Services

Appendix III

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 "and commencement" after "title".</p> <p>(b) By renumbering the clause as clause 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 the 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 "and</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) 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".
- (zb) By deleting the proposed section 128C(21).

- (zc) In the proposed section 128C(22)-
 - (i) by deleting "lodging" and substituting "making";
 - (ii) by deleting "court" and substituting "Chairman".
- (zd) By deleting the proposed section 128C(23).
- (ze) 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.

(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.

(13) 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.

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

(15) 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.

(16) 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.

(17) The making of an appeal under subsection (16) does not operate as a stay of execution of a closure order unless the Court of First Instance otherwise orders.

(18) Subject to this section and to rules made under subsection (20), the person presiding may determine the procedure at the hearing of an appeal made to the Appeal Board.

(19) 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.

(20) 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".

- (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".