

立法會
Legislative Council

Ref : CB2/BC/1/08

LC Paper No. CB(2)570/08-09
(These minutes have been
seen by the Administration)

**Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2008**

**Minutes of meeting
held on Thursday, 11 December 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
- Members absent** : Hon WONG Yung-kan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public Officers attending** : Item II
Prof Gabriel M LEUNG, JP
Under Secretary for Food & Health

Mrs Angelina CHEUNG FUNG Wing-ping
Principal Assistant Secretary for Food & Health (Food) 1

Dr Constance CHAN Hon-ye, JP
Controller, Centre for Food Safety
Food and Environmental Hygiene Department

Dr LEE Siu-yuen
Assistant Director (Food Surveillance & Control)
Food and Environmental Hygiene Department

Ms Leonora IP Wan-yok
Senior Government Counsel
Law Drafting Division
Department of Justice

Miss Mandy NG Wing-man
Government Counsel
Law Drafting Division
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Alice LEUNG
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)297/08-09(03) and (04), CB(2)357/08-09(01), CB(2)453/08-09(01) to (06) and CB(2)466/08-09(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members noted the following papers provided by the Administration and did not raise any query -

- (a) Response to questions raised by Mr WONG Ting-kwong on the Bill (LC Paper No. CB(2)453/08-09(01));
- (b) Consultation on the Food Safety Bill (LC Paper No. CB(2)453/08-09(02));
- (c) Arrangement for seizure of food (LC Paper No. CB(2)453/08-09(03));

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- (d) Penalty relating to non-compliance with the orders made under the Bill (LC Paper No. CB(2)453/08-09(05)); and
- (e) Powers in relation to food incidents in legislation of other jurisdictions (LC Paper No. CB(2)453/08-09(06)).

New section 78B - Additional powers in relation to food

3. Ms Audrey EU said that to her understanding, codes of practice issued by government departments, such as the Buildings Department and the Inland Revenue Department, were solely for compliance by the public. However, the proposed code of practice referred to in paragraph 6 of the Administration's paper entitled "Circumstances under which a Section 78B Order would be Made" (LC Paper No. CB(2) 453/08-09 (04)) would apply to the public as well as public officers. Paragraph 6 of the aforesaid paper read as follows -

"In order to provide practical guidance in respect of the provisions in the Amendment Bill, in particular the making of section 78B orders, we propose to include a new section in the Amendment Bill to empower the Director of Environmental Hygiene (DFEH) to issue a set of code of practice on the matter. A failure on the part of any person to observe any provision of a code of practice does not of itself render the person liable to any civil or criminal proceedings. However, if in any legal proceedings the court is satisfied that a provision of a code of practice is relevant to determining a matter that is in issue in the proceedings, the code of practice is admissible in evidence in the proceedings and proof that the person contravened, or did not contravene, a relevant provision of the code of practice may be relied on by any party to the proceedings as tending to establish or negate that matter."

Admin

- 4. At the request of Ms EU, the Administration undertook to revert in writing whether any local legislation imposed compliance of its code of practice on public officers, and if so, to identify such legislation.
- 5. The Administration advised that following consultation with the trade on 19 December 2008, the Administration would submit the draft code of practice to the Bills Committee for comments in around January 2009.

New section 78H - Compensation

6. Members noted from paragraph 11 of the Administration's paper entitled "Compensation" (LC Paper No. CB(2) 466/08-09 (01)) of its plan to amend the new section 78H to the effect that if the criteria set out in section 78H were met

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and the court agreed to award compensation, the compensation recoverable should be just and equitable in all the circumstances of the case and should cover -

- (a) the total or partial loss of the food which arise as a direct result of compliance with the order made by DFEH and that the food (i) has been destroyed or otherwise disposed of; (ii) is no longer fit for human consumption; or (iii) is depreciated in value and the compensation in relation to such situation should not exceed the market value of the food at the time of making the order; and
- (b) loss of any other kind (excluding, for the avoidance of doubt, any indirect loss) which arise as a direct result of compliance with the order made by DFEH and the compensation in relation to such situation should not exceed the actual amount of the loss suffered.

7. Mr Tommy CHEUNG, Mr Vincent FANG, Ms Cyd HO and Mr WONG Ting-kwong pointed out that it was extremely difficult, if not impossible, for a person bound by a section 78B order to prove that DFEH had no reasonable grounds in making the order in order to be awarded compensation from the court. These members held the view that the Administration should automatically compensate the person bound by a section 78B order the market value of the food at the time of making the order, if the food test proved that the food concerned was not problematic.

8. The Administration responded as follows -

- (a) the compensation mechanism proposed in the Bill was similar to other local legislation which were aimed at protecting public health and public safety, examples of which were set out in paragraph 5 of LC Paper No. CB(2) 466/08-09 (01);
- (b) in order to simplify the procedures for aggrieved persons to claim compensation from the Government, the Bill provided that an application for claims might be made to the Small Claims Tribunal, for claims up to the maximum jurisdiction of the Tribunal, and to the District Court, irrespective of the amount claimed; and
- (c) to require the Government to compensate the person bound by a section 78B order the market value of the food at the time of making the order, if the food test proved that the food concerned was not problematic, would defeat the purpose of the Bill to

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enable DFEH to take timely and prompt action to protect public health.

Admin

9. Ms Audrey EU said that to mitigate the adverse effect of the section 78B orders on the trade, the Bill should specify that DFEH should conduct food testing as expeditiously as was practicable upon making of the order.

II. Date of next meeting

10. Members agreed to hold the next meeting on 10 January 2009 at 9:00 am.

11. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 2
Legislative Council Secretariat
2 January 2009

**Proceedings of the meeting of the
Bills Committee on Public Health and Municipal Services
(Amendment) Bill 2008
on Thursday, 11 December 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000317	Chairman	Welcoming remarks	
000318 - 000502	Admin	Administration's responses to issues raised by members and the deputations at the meetings on 18 November and 4 December 2008 [LC Paper Nos. CB(2)453/08-09(01) to (06) and CB(2)466/08-09(01)]	
000503 - 001822	Mr Tommy CHEUNG Admin Chairman	Mr Tommy CHEUNG's support of the Administration's proposal to extend the appeal period to 28 days, and his view that the Administration should automatically compensate a person bound by a section 78B order the market value of the food at the time of making the order if the food test result showed that the food concerned was not problematic	
001823 - 002432	Mr WONG Kwok-hing Admin Chairman ALA4	Mr WONG Kwok-hing's enquiry as to when the Administration would provide its proposed amendment to the new section 78D(3)(b)	
002433 - 003539	Ms Audrey EU Admin	Concern on whether there was any local legislation imposing compliance of its code of practice on public officers	Admin to provide written response (para. 4 of the minutes)
003540 - 004239	Mr Vincent FANG Admin	Mr Vincent FANG's expression of similar view with Mr Tommy CHEUNG on the issue of compensation	
004240 - 005449	Ms Cyd HO Admin	Ms Cyd HO's expression of similar view with Mr Tommy CHEUNG and Mr Vincent FANG on the issue of compensation	
005450 - 011232	Ms Audrey EU Ms Cyd HO Mr Vincent FANG Chairman Admin	Discussion on whether compensation should be awarded automatically to the affected food traders if the food test revealed that the food concerned was not problematic	
011233 - 011759	Ms Audrey EU Admin	Ms Audrey EU's suggestion to specify in the Bill that DFEH should conduct food testing as expeditiously as was practicable upon making of the orders	Admin to consider (para. 9 of the minutes)
011760 - 012258	Mr Vincent FANG Admin Chairman	Concern about the unduly long time for conducting the testing of food samples	

Time marker	Speaker	Subject	Action required
012259 - 012727	Mr WONG Ting-kwong Chairman	Mr WONG Ting-kwong's expression of similar view with Mr Tommy CHEUNG, Mr Vincent FANG and Ms Cyd HO on the issue of compensation	
012728 - 012851	Ms Cyd HO Chairman	Ms Cyd HO's reiteration of her view on the issue of compensation	
012852 - 013524	Chairman Mr Vincent FANG Admin Ms Cyd HO Mr WONG Ting-kwong	Members' request for the Administration to explain clearly to the trade the criteria set out in section 78H for awarding compensation to a person bound by a section 78B order	
013525 - 014158	Chairman Clerk	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
2 January 2009