

立法會
Legislative Council

Ref : CB2/BC/1/08

LC Paper No. CB(2)725/08-09
(These minutes have been seen
by the Administration)

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

**Minutes of meeting
held on Saturday, 10 January 2009, at 8:30 am
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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Dr Hon LEUNG Ka-lau

Members absent : Hon WONG Yung-kan, SBS, JP
Hon Cyd HO Sau-lan

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. Confirmation of minutes

[LC Paper Nos. CB(2)569/08-09 and CB(2)570/08-09]

The minutes of the meetings held on 4 and 11 December 2008 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)602/08-09(01) to (04)]

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

3. Members noted a submission from the Hong Kong Suppliers Association Ltd. tabled at the meeting [LC Paper No. CB(2) 645/08-09(01)].

New section 78B - Additional powers in relation to food

4. Members noted the Administration's plan to amend the new section 78B to provide that the Director of Food and Environmental Hygiene (DFEH) might take into consideration the following factors in deciding whether there were reasonable grounds for him to make a section 78B order -

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- (a) information or document provided by the food traders, if any, on the safety of the food;
- (b) results of food tests conducted by the Public Analyst, if available;
- (c) results of food tests conducted by food safety authorities of other countries or places;
- (d) food alerts issued by food safety authorities of other countries or places;
- (e) time required for conducting the food test;
- (f) the exposure of the general public or particular vulnerable groups to the food;
- (g) consumption pattern relating to the food;
- (h) statutory standard of the concerned substances in the food, if any;
- (i) availability of information on the contamination of a particular batch or consignment of the food;
- (j) availability of information on the contamination of a particular food factory or the whole region; and
- (k) any other relevant considerations.

Members further noted that the factors would be clearly set out in the relevant codes of practice (CoP).

5. Ms Audrey EU said that the Civic Party welcomed the Administration's plan to specify the host of factors in the Bill that DFEH might take into consideration in making a section 78B order.

6. Dr Joseph LEE asked whether the host of factors mentioned in the draft CoP was exhaustive. The Administration responded that the factors were drawn up having regard to past experience and the trade had been consulted in the context of the draft CoP.

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New section 78G - Appeals to Municipal Services Appeals Board
New section 78H - Compensation

7. Mr Tommy CHEUNG, Mr WONG Ting-kwong and Mr Vincent FANG were of the view that the Administration should automatically compensate persons bound by section 78B orders the loss they had suffered in relation to the orders if the food concerned was tested to be not problematic, without the need for the persons to seek compensation from the court via the mechanism provided under the new sections 78G and 78H.

8. The Administration responded that to do so would defeat the objective of the Bill to protect public health, as some traders might choose not to voluntarily cease to supply or sell food or recall food that might pose a risk to public health if compensation would be provided by the Government should the food concerned was found not to be problematic in the end. The Administration further said that the Bill should not impose extra burden on the trade, as the trade had all along automatically ceased to supply or sell food or recall food that might pose a risk to public health.

9. Members noted that for a person bound by a section 78B order to seek compensation from the court to recover loss he had suffered as a result of the order from the Government, the person must first appeal against the order to the Municipal Services Appeals Board (MSAB) within a specified period from being bound by the order under the new section 78G. Only when the MSAB had varied or set aside the order could the person proceed to seek compensation from the court. Members further noted that in order to obtain compensation from the court, the person must prove that DFEH did not have reasonable grounds to make the order at the time of making the order and that he had suffered loss as a result of the order.

10. Mr Alan LEONG asked why a person aggrieved by a section 78B order had to prove to the court that DFEH did not have reasonable grounds to make the order at the time of making the order, after MSAB had come up with a decision to vary or set aside the order.

11. The Administration explained that this was because decisions to vary or set aside a section 78B order were not confined to the reason that DFEH did not have reasonable grounds to make the order at the time of making the order in accordance with the factors set out in the new section 78B. However, if MSAB did make the decision to vary or set aside a section 78B order on the basis that DFEH did not have reasonable grounds to make the order at the time of making the order in accordance with the factors set out in the amended new section 78B, the court would normally respect MSAB's decisions.

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12. In response to Mr WONG Ting-kwong's enquiry on the rationale for the two-step approach in seeking compensation, the Administration said that the waiting time for MSAB to hear an appeal was shorter and the procedures also simpler than that for the court. Moreover, the appellants did not need legal representation in MSAB proceedings.

13. Mr WONG Ting-kwong opined that if MSAB was assigned the task to vary or set aside a section 78B order, the quickest way for persons aggrieved by section 78B orders to obtain compensation was to empower MSAB to award compensation. If this could not be done, persons aggrieved by section 78B orders should be allowed to seek compensation from the court direct as they so wished.

14. Mr Tommy CHEUNG expressed opposition to the arrangement of allowing persons aggrieved by section 78B orders to seek compensation from the court only if the persons had made appeals to MSAB and the Board had varied or set aside the orders, as members of MSAB were appointed by the Chief Executive. Even if a person aggrieved by the MSAB's decision could apply to the court for judicial review, it was questionable whether the court would rule against the decision made by a board chaired by a retired judge.

15. Dr Joseph LEE said that the Bill should provide persons aggrieved by section 78B orders the options to seek compensation from the court direct or through the compensation mechanism provided under the new sections 78G and 78H. Mr Andrew CHENG expressed similar views.

Admin 16. The Administration said that it would consider members' views on the compensation mechanism under the Bill.

Admin 17. At the request of Mr Tommy CHEUNG, the Administration undertook to provide a flowchart on the procedures for seeking compensation for the loss suffered as a result of a section 78B order, with indication on the time required for each of the procedure.

New section 78K - Codes of practice

18. Mr Andrew CHENG asked whether the implementation of the CoP on section 78B orders would dovetail with that of the Bill. The Administration replied in the positive.

Admin 19. Mr CHENG further requested to replace the word "may" referred to in the new section 78K(1) with "shall". The Administration agreed to consider.

Action

III. Dates of next meetings

20. Members agreed to hold the next two meetings on the following dates -

(a) 22 January 2009 at 2:30 pm; and

(b) 5 February 2009 at 2:30 pm.

Members further agreed to invite deputations to give views on the draft CoP at the February meeting.

21. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
21 January 2009

**Proceedings of the meeting of the
Bills Committee on Public Health and Municipal Services
(Amendment) Bill 2008
on Saturday, 10 January 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000213	Chairman	Opening remarks	
000214 - 000811	Admin	Briefing by the Administration on the Draft Code of Practice (CoP) on section 78B orders under Part VA of Public Health and Municipal Services Ordinance (Cap. 132) and the Draft Committee Stage amendments proposed by the Administration (LC Paper Nos. CB(2)602/08-09(03) & (04))	
000812 - 000833	Chairman	Confirmed minutes of meetings on 4 and 11 December 2008	
000834 - 001409	Ms Audrey EU Admin	Ms Audrey EU's indication of support of the Administration's proposal to specify clearly the host of factors in the Bill that the Director of Food and Environmental Hygiene (DFEH) might take into consideration in making a section 78B order	
001410 - 001938	Mr WONG Kwok-hing Chairman Mr Tommy CHEUNG Ms Audrey EU	Mr WONG Kwok-hing's support of the Administration's proposed amendment to the new section 78D(3) relating to the defence for an employee charged with an offence for contravening a section 78B order Members' agreement to invite deputations to give views on the draft CoP provided by the Administration	
001939 - 002706	Mr Andrew LEUNG Admin	Discussion on the following issues relating to the draft CoP - (a) whether there would be any liability for failing to comply with the CoP (paragraph 4.5); (b) whether it was a defence for a person who had contravened a section 78B order if he had obtained a licence, permit or other form of authorisation issued or granted under the law (paragraph 5.5); (c) in what ways would the Administration notify the persons bound by a section 78B order if DFEH varied or revoked the order (chapter 6); and	

Time marker	Speaker	Subject	Action required
		(d) claim for compensation for the loss sustained by the food trade arising from its compliance with the section 78B orders (chapter 8)	
002707 - 003906	Mr Tommy CHEUNG Admin Chairman	Mr Tommy CHEUNG's request for the Administration to provide a flowchart on the procedures for seeking compensation for the loss suffered as a result of a section 78B order, with indication on the time required for each of the procedure	Admin to provide written response (para. 17 of the minutes)
003907 - 010455	Mr WONG Ting-kwong Admin Chairman Mr Tommy CHEUNG ALA4	Discussion on the concern over the two-step approach in seeking compensation (i.e. an appeal to the Municipal Services Appeals Board (MSAB) and a claim for compensation from the court)	
010456 - 011836	Mr Vincent FANG Admin	Mr Vincent FANG's concern about the prescribed prerequisite that a person bound by a section 78B order had to prove that DFEH did not have reasonable grounds at the time of making a section 78B order if he would like to apply to the court for compensation	
011837 - 014156	Mr Alan LEONG Admin ALA4 Chairman Mr Tommy CHEUNG	Discussion on the concern that there was certain overlapping of work between MSAB and the court in considering whether DFEH had reasonable grounds to make a section 78B order at the time of making the order	
014157 - 015110	Dr Joseph LEE Admin	Dr Joseph LEE's view that options should be provided for the persons aggrieved by section 78B orders to seek compensation from the court direct or through the compensation mechanism provided under the new sections 78G and 78H	
011511 - 015802	Mr Andrew CHENG Admin	Mr Andrew CHENG's suggestion on the wording of CSA relating to the new section 78K(1) to be moved by the Administration	Admin to consider (para. 19 of the minutes)
015803 - 020532	Dr LEUNG Ka-lau Admin	Discussion on the objective and reasonable criteria that DFEH might take into account in deciding whether to make a section 78B order Dr LEUNG Ka-lu's view that consideration should be given to establishing a compensation fund to provide compensation to persons bound by section 78B orders who suffered losses as a result of the orders	
020533 - 021111	Chairman Admin Mr WONG Ting-kwong Mr Vincent FANG	Dates of next meetings	