

立法會
Legislative Council

Ref : CB2/BC/1/08

LC Paper No. CB(2)886/08-09

(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, 22 January 2009, at 2:30 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
Hon Andrew LEUNG Kwan-yuen, SBS, 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
Dr Hon Joseph LEE Kok-long, 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 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

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I. Confirmation of minutes
[LC Paper No. CB(2)725/08-09]

The minutes of meeting held on 10 January 2009 were confirmed.

II. Meeting with the Administration
[LC Paper Nos. CB(2)723/08-09(01), (02) and (03)]

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

3. The Administration briefed members on its responses to issues raised by members at the meeting on 10 January 2009, details of which were set out in LC Paper No. CB(2) 723/08-09(01).

Making of a new section 78B order

4. Members noted that although the host of factors which the Director for Food and Environmental Hygiene (DFEH) might take into consideration in deciding whether there were reasonable grounds for him to make a section 78B order would be amalgamated from 11 to seven factors under the new section 78B(2A), the scope of factors would remain unchanged. Members further

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noted that corresponding changes would be made to the draft code of practice (CoP) on section 78B orders under Part VA of the Public Health and Municipal Services Ordinance (Cap. 132).

5. Ms Cyd HO said that although new section 78B(3)(c) provided that a section 78B order must specify the reason for making the order, amongst others, all relevant information should also be provided to the person bound by the order on issuing the order so as to better help the person concerned to decide whether to seek compensation under the new section 78H.

6. Mr Alan LEONG suggested amending the new section 78B(3)(c) to specify that a section 78B order must accompany all relevant information on which DFEH had based in making the order.

7. The Administration responded that there would be practical difficulty in attaching all relevant information to a section 78B order, having regard to the voluminousness of the information that might entail and the large number of persons bound by the order that might involve. The Administration, however, pointed out that under the Code on Access to Information, the Government must make available information to the public upon request unless there were valid reasons to withhold the information, such as related to commercial interests. The Administration further pointed out that the Municipal Services Appeals Board (MSAB) was empowered to order the respondent to give evidence and produce documents, should the Board consider that the information provided by the appellant was not adequate for the Board to hear the appeal.

Appeals and Compensation

8. Members noted the Administration's plan to remove the requirement that a person bound by a section 78B order must first seek a decision from MSAB if he wanted to seek compensation under the new section 78H.

9. Mr Tommy CHEUNG said that while he welcomed the proposed amendments by the Administration with regard to appeal and compensation, he remained of the view that the Administration should automatically compensate persons bound by section 78B orders if results of food tests revealed that the food concerned was not problematic.

10. Ms Cyd HO said that it was unfair for food traders to bear losses, through no faults of their own, for the sake of safeguarding public health. Ms HO requested the Administration to discuss with the insurance industry on introducing an insurance product to help share the risk of losses that were attributable to the making of section 78B orders. If this could not be realised, it

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was incumbent upon the Administration to automatically compensate persons bound by section 78B orders if results of food tests revealed that the food concerned was not problematic. Dr LEUNG Ka-lau expressed similar views.

11. The Administration pointed out that at present, the Government did not compensate food traders who voluntarily removed food from the shelves/recalled food from the market because of, say, a food alert issued by DFEH. Hence, the Administration did not see the justification for the Government to automatically compensate persons bound by section 78B orders if results of food tests revealed that the food concerned was not problematic. The Administration further pointed out that no overseas places would automatically compensate food traders for the loss they had suffered for removing food from the shelves/market, irrespective of whether the act was voluntary or mandatory, and the food concerned turned out to be not problematic.

12. The Administration also said that it had discussed with the insurance industry. The Administration surmised that it would be very difficult, if not impossible, for the insurance industry to come up with a "one-size-fit-all" insurance product to insure against the loss suffered by persons bound by section 78B orders as the risks faced by food traders varied depending on, say, their mode of operation and the potential hazard and quantity of the food they supplied. Mr WONG Ting-kwong and Mr Vincent FANG shared the Administration's observations. Mr FANG further said that given the potential risk of the occurrence of unprecedented food incident, such as the recent detection of melamine in milk and dairy products, it was questionable whether the insurance industry would be interested in introducing an insurance product to insure against the loss suffered by persons bound by section 78B orders at premiums affordable to all food traders.

13. Mr Alan LEONG said that the Civic Party considered that if DFEH had taken into account the host of factors under the new section 78B(2A) in making a section 78B order, compensation should not be automatically made by the Government even if the results of food tests revealed that the food concerned was not problematic. Mr LEONG, however, said that he had no strong views about exploring the feasibility of introducing an insurance product to help share the risk of losses that were attributable to the making of section 78B orders, so long as to do so would not prolong the scrutiny work of the Bills Committee.

14. The Chairman suggested inviting the Hong Kong Federation of Insurers to attend the meeting scheduled for 5 February 2009 to give views on providing insurance coverage to the food trade for the loss they had suffered as a result of the making of section 78B orders. Members agreed.

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Clause-by-clause examination of the Bill

Admin 15. The Administration was requested to consider replacing “條件”, referred to in the Chinese text of new section 78A with regard to the definition of “hazard”, with "狀況" to better reflect its legislative intent. The Administration agreed to consider.

Admin 16. The Administration advised that the new section 78B(1)(e) was a catch-all provision to cover the supply of food for non-commercial purposes. The Chairman and Ms Audrey EU were of the view that the drafting of the new section 78B(1)(e) could not reflect clearly the legislative intent. The Administration undertook to provide some illustrations in writing on the application of the new section 78B(1)(e).

II. Any other business

17. The Chairman reminded members that the next meeting had been scheduled for 5 February 2009 at 2:30 pm to listen to the views of deputations on the draft CoP.

18. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 2
Legislative Council Secretariat
16 February 2009

**Proceedings of the meeting of the
Bills Committee on Public Health and Municipal Services
(Amendment) Bill 2008
on Thursday, 22 January 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|--------------------|--------------------------------|---|------------------------|
| 000000 - 000250 | Chairman | Confirmation of minutes of meeting on 10 January 2009 | |
| 000251 - 000813 | Admin | Briefing by the Administration on LC Paper No. CB(2)723/08-09(01) detailing its responses to issues raised by members at the meeting on 10 January 2009 | |
| 000814 - 000940 | Mr Tommy CHEUNG Chairman | Mr Tommy CHEUNG's reiteration of his view that the Administration should automatically compensate persons bound by section 78B orders if results of food tests revealed that the food concerned was not problematic | |
| 000941 - 001303 | Mr Vincent FANG Admin | The Administration's response to Mr Vincent FANG's enquiry about the provision of health certificate/document certifying that the food concerned was not problematic by the food supplier as follows - (a) the health certificates or documents provided by the suppliers or manufacturers could facilitate source tracing of problematic food as and when necessary; and (b) food traders could use the health certificates/documents provided by food suppliers or manufacturers as a defence in proceedings against them in relation to a contravention of food safety legislation | |
| 001304 - 003243 | Ms Cyd HO Admin Chairman | Ms Cyd HO's expression of view that all relevant information should also be provided to the person bound by a section 78B order in the issuing of the order and her request that the Administration should discuss with the insurance industry on introducing an insurance product to help share the risk of losses that were attributable to the making of section 78B orders | |

| Time marker | Speaker | Subject | Action required |
|-----------------|---|---|-----------------|
| 003244 - 003938 | Dr LEUNG Ka-lau Chairman Ms Audrey EU Mr Alan LEONG Admin | <p>Dr LEUNG Ka-lau's expression of similar view with Ms Cyd HO on the issue of introducing an insurance product for food traders</p> <p>Ms Audrey EU's and Mr Alan LEONG's view about exploring the feasibility of introducing an insurance product for food traders</p> <p>Mr Alan LEONG's suggestion to amend the new section 78B(3)(c) to specify that a section 78B order must accompany all relevant information on which the Director for Food and Environmental Hygiene (DFEH) had based in making the order</p> | |
| 003939 - 005342 | Ms Cyd HO Chairman Mr Vincent FANG Dr LEUNG Ka-lau Mr WONG Ting-kwong Mr Alan LEONG Admin | <p>Mr Vincent FANG and Mr WONG Ting-kwong pointing out that food incidents might be due to 'new' or 'unexpected' causes and it was extremely difficult, if not impossible, for the insurance sector to work out an insurance product for food traders</p> <p>Mr Alan LEONG's expression of the view of Civic Party that if DFEH had taken into account all the factors under the new section 78B(2A) in making a section 78B order, compensation should not be automatically made by the Government even if the results of food tests revealed that the food concerned was not problematic</p> <p>The Administration's response that at present, the Government did not compensate food traders who voluntarily removed food from the shelves/recalled food from the market</p> | |
| 005343 - 010831 | Mr Vincent FANG Admin Mr WONG Ting-kwong Chairman | Mr WONG Ting-kwong's and Mr Vincent FANG's explanation of the current trade practice on the fees charged by supermarkets or superstores for putting food on the shelves | |
| 010832 - 013329 | Ms Cyd HO Chairman Mr WONG Ting-kwong | Members' agreement to the Chairman's suggestion of inviting the Hong Kong Federation of Insurers to attend the meeting scheduled for 5 February 2009 | |

| Time marker | Speaker | Subject | Action required |
|-----------------|---|---|--|
| 11330 - 013224 | Chairman Admin Ms Audrey EU Ms Cyd HO ALA4 Mr Alan LEONG | <p>Clause-by-clause examination of the Bill</p> <p><u>New section 78A "Interpretation of Part VA"</u></p> <p>The Administration's advice was that section 57 of Cap. 132 provided that section 55 or 56 of Cap. 132 might include provision for the prohibition, restriction or regulation of the sale, or the possession, offer or exposure for sale or consignment or delivery for sale, of live poultry, live reptiles and live fish in the same manner as if such live poultry, live reptiles and live fish were food. Therefore, the meaning of "food" in the new Part VA of Cap. 132 was consistent with that. The Administration would broaden the definition of "food" under the new Food Safety Bill and for the sake of consistency, corresponding amendments to the definition of "food" under Cap. 132 would be made.</p> <p>The Administration's agreement to consider replacing "條件", referred to in the Chinese text of new section 78A with regard to the definition of "hazard", with "狀況" to better reflect its legislative intent</p> | <p>Admin to consider (para. 15 of the minutes)</p> |
| 013225 - 020236 | Admin ALA4 Ms Audrey EU Chairman Mr Alan LEONG | <p><u>New Section 78B "Additional powers in relation to food"</u></p> <p>On Mr Alan LEONG's enquiry as to whether the word "supplied" as referred to in 78B(1)(c) should be changed to "supply", the Administration's response that in accordance with section 5 of the Interpretation and General Clauses Ordinance (Cap. 1), where any word or expression was defined in any Ordinance, such definition should extend to the grammatical variations and cognate expressions of such word or expression</p> <p>The Administration's undertaking to provide some illustrations in writing on the application of the new section 78B(1)(e)</p> | <p>Admin to provide response (para. 16 of the minutes)</p> |
| 020237 - 020327 | Chairman | Date of next meeting | |